Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 16 DECEMBER 8, 1982 No. 49

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 82-222)

Reimbursable Services—Excess Cost of Preclearance Operations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 17, 1982.

Installation	Biweekly excess cost
Montreal, Canada	$16,265
Toronto, Canada	29,365
Kindley Field, Bermuda	6,661
Nassau, Bahama Islands	21,382
Vancouver, Canada	13,450
Winnipeg, Canada	2,162
Freeport, Bahama Islands	14,843
Calgary, Canada	8,001
Edmonton, Canada	4,803

MITCHELL A. LEVINE,
Acting Comptroller.

Published in the Federal Register, November , 1982 (47 FR)

(T.D. 82-223)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 18, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Albaugh Truck Line, Inc., P.O. Box 85, 123 Main St., Elkhart, IA; motor carrier; State Surety Co.	Sept. 1, 1982	Oct. 4, 1982	Chicago, IL $50,000
All American Airfreight, 7910 N.E. Airport Way, Portland, OR; motor carrier; Old Republic Ins. Co.	Sept. 15, 1982	Sept. 16, 1982	Portland, OR $50,000
Atlantis Transportation Services Ltd., 900 Stevenson Rd., N., Oshawa, Ontario, Canada; motor carrier; Fireman's Fund Ins. Co. D 8/7/82	July 6, 1981	July 15, 1981	Buffalo, NY $25,000
Blalock Truck Line, Inc., P.O. Box 734, Charleston, SC; motor carrier; American Centennial Ins. Co. (PB 8/6/81) D 9/23/82 [1]	Aug. 6, 1982	Sept. 23, 1982	Charleston, SC $25,000
Dayton Air Freight, Inc., Dayton International Airport, P.O. Box 78, Vandalia, OH; motor carrier; Commercial Union Ins. Co. D 10/1/82	Jan. 1, 1979	Feb. 12, 1979	Cleveland, OH $50,000
Expedited Air Service, Inc., P.O. Box 40, Cudahy, WI; motor carrier; The Continental Ins. Co.	July 28, 1982	Oct. 1, 1982	Milwaukee, WI $25,000
Expressway, P.O. Box 697, Greer, SC; motor carrier; Allied Fidelity Ins. Co.	Aug. 10, 1982	Oct. 7, 1982	Charleston, SC $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Fowler & Williams, Inc., 1300 Meylert Ave., Scranton, PA; motor carrier; Nationwide Mutual Ins. Co. D 10/7/82	Mar. 24, 1981	Apr. 22, 1981	New York Seaport $50,000
Carl T. Free, P.O. Box 45, Weatherford, TX; motor carrier; Lawyers Surety Corp. D 10/6/82	Aug. 25, 1976	Jan. 19, 1977	Laredo, TX $25,000
Gary Wayne Parish, dba: G & C Freight Service, 647, S.W. 143rd St., Seattle, WA; motor carrier; Transamerica Ins. Co. (PB 7/6/81) D 10/6/82 [2]	July 10, 1982	Oct. 6, 1982	Seattle, WA $25,000
S. M. Glukstad—See Miami International Forwarders			
The Hawaii Express, Inc., 10960 Wilshire Blvd., Los Angeles, CA; air carrier; Commerical Union Ins. Co.	Aug. 24, 1982	Sept. 27, 1982	Honolulu, HI $25,000
Herder Truck Lines, Inc., 105 W. Post Office, Weimar, TX; motor carrier; United States Fidelity & Guaranty Co. (PB 3/20/68) D 9/29/82	Aug. 18, 1982	Sept. 29, 1982	Laredo, TX $25,000
Intermodal Systems, Inc., P.O. Box 281, Fort Scott, KS; motor carrier; American Casualty Co. of Reading, PA	Sept. 15, 1982	Oct. 4, 1982	St. Louis, MO $50,000
La Salle Trucking Co., P.O. Box 3447, Chula Vista, CA; motor carrier; Employers Ins. of Wausau A Mutual Co. (PB 6/16/76) D 10/6/82 [3]	Sept. 17, 1982	Oct. 6, 1982	San Diego, CA $50,000
"Los Vaqueros" Cooperativa, Transporte de Carga, Edificio D. Mercado Central, Puerto Nuevo, PR; motor carrier; Puerto Rican-American Ins. Co. D 7/7/81	July 14, 1977	July 14, 1977	San Juan, PR $25,000
M & J Trucking Co., 20 Atlantic St., Bridgeport, CT; motor carrier; Aetna Casualty & Surety Co. (PB 12/12/80) D 9/30/82	Apr. 14, 1982	Oct. 1, 1982	Bridgeport, CT $25,000
A. E. "Bill" McAnally, Rt. 4, Box 45 (Rt. 1, Box 350), Weatherford, TX; motor carrier; Lawyers Surety Corp. D 10/8/82	Apr. 4, 1977	Sept. 30, 1977	Laredo, TX $25,000
McGillion Transport Inc., P.O. Box 644, Bolten, Ontario, Canada; motor carrier; Hartford Fire Ins. Co.	Feb. 18, 1982	Sept. 29, 1982	Buffalo, NY $25,000
H. A. Maggard, dba: Maggard Truck Line, P.O. Box 1046, Harlingen, TX; motor carrier; Fidelity & Deposit Co. of MD D 10/7/82	July 8, 1968	July 31, 1968	Laredo, TX $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Sig M. Glukstad, Inc., dba: Miami International Forwarders, 3050 Biscayne Blvd., Suite 703, Miami, FL; motor carrier; Old Republic Ins. Co. (PB 9/12/78) D 8/20/82 [4]	Aug. 20, 1982	Aug. 20, 1982	Miami, FL $50,000
Nu-Car Carriers Inc., 950 Haverford Rd., Byrn Mawr, PA; motor carrier; Liberty Mutual Ins. Co. (PB 2/3/78) D 9/9/82	July 28, 1982	Sept. 9, 1982	Philadelphia, PA $25,000
Parker Transport, Inc., 1900 Lytton Springs Rd., Healdsburg, CA; motor carrier; South Carolina Ins. Co.	Aug. 6, 1982	Oct. 7, 1982	San Francisco, CA $25,000
Pinder's Transfer, Inc., 4421 S.W. 134th Court, Miami, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	Aug. 6, 1982	Aug. 6, 1982	Miami, FL $25,000
Sauder Industries Ltd., P.O. Box 49100, Three Bentall Centre, Vancouver, B.C., Canada; motor carrier; Ins. Co. of North America	Aug. 24, 1982	Sept. 27, 1982	Seattle, WA $25,000
Sheppard Truck Lines, 7680 Brandywine Rd., North Charleston, SC; motor carrier; Allied Fidelity Ins. Co.	Aug. 18, 1982	Sept. 21, 1982	Charleston, SC $25,000
Thompson Trucking, Inc., P.O. Box 9713, Charleston, SC; motor carrier; American Motorists Ins. Co.	Sept. 10, 1982	Sept. 23, 1982	Charleston, SC $50,000
Travis Transportation, Inc., P.O. Box 18747, San Antonio, TX; motor carrier; National Surety Corp. (PB 5/8/80) D 9/29/82 [5]	Aug. 24, 1982	Sept. 29, 1982	Laredo, TX $25,000
J. J. Willis Trucking Co., P.O. Box 47127, Dallas, TX; motor carrier; Highlands Ins. Co. D 9/24/82	Mar. 5, 1980	Mar. 5, 1980	El Paso, TX $25,000

[1] Surety is United National Ins. Co.
[2] Surety is Allied Fidelity Ins. Co.
[3] Principal is La Salle Trucking Co., Inc.; Surety is Ins. Co. of North America.
[4] Surety is Investors Ins. Co. of America.
[5] Surety is United States Fidelity & Guaranty Co.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(19 CFR Parts 4, 10, 11, 141, 148, 151, 152, and 162)

(T.D. 82-224)

Conforming Customs Regulations Amendments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain conforming changes to the Customs Regulations which are necessary because of various executive, legislative, and administrative actions. The changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: November 29, 1982.

FOR FURTHER INFORMATION CONTACT: Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFROMATION:

Background

As part of a continuing program to keep its regulations current, the Customs Service has determined that various executive, legislative, and administrative actions require conforming amendments to numerous parts of the Customs Regulations (Chapter I, Title 19, Code of Federal Regulations (19 CFR Chapter I)). Following is a list of these actions, the affected sections of the regulations, and the necessary changes:

Discussion of Changes

1. Notes 1 through 4 following the index in Part 4, Customs Regulations (19 CFR Part 4), relating to vessels in foreign and domestic trades, are no longer needed. The notes summarize Treasury Decisions which waived the navigation laws under specified circumstances and for specified purposes. These waivers have no particular significance to distinguish them from the other 123 waivers which have been granted since 1951. In fact, two of the waivers have been rendered obsolete by the completion of the St. Lawrence Seaway. Accordingly, Notes 1 through 4 are being removed from Part 4.

2. Footnote 3 to section 4.2, Customs Regulations (19 CFR 4.2), relating to reporting the arrival and entry of vessels, in one paragraph incorrectly refers to section 401(n), Tariff Act of 1930, as amended, instead of section 432a, and in another paragraph, sec-

tion 401(n), Tariff Act of 1930, as amended, instead of section 401(k). These cites are being corrected.

3. Customs Form 1400-A, "Record of Vessels Engaged in Foreign Trade—Cleared or Granted Permit to Proceed", and Customs Form 1401-A, "Record of Vessels Engaged in Foreign Trade—Entered or Arrived Under Permit to Proceed", have been abolished, requiring an amendment to section 4.95, Customs Regulations (19 CFR 4.95), relating to records of the entry and clearance of vessels.

4. Navigation Fee No. 6 ("Receiving official bond not otherwise provided for"), collected principally from vessels in the Alaska trade, has been abolished, requiring amendments to paragraphs (a)(1) and (f) of section 4.98, Customs Regulations (19 CFR 4.98).

5. The reference to item 802.40, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), in section 10.66(c), Customs Regulations (19 CFR 10.66(c)), relating to horses exported for temporary exhibition or racing and returned, and footnote 62a is being deleted. Item 802.40 was removed from the TSUS pursuant to Presidential Proclamation 4707, dated December 11, 1979, under the authority of the Trade Act of 1974, by which horses were made unconditionally free of duty under Schedule 1, Part 1, TSUS.

6. Customs Form 7531-A, "Transfer Certificate Of Wool Or Camel Hair Imported Conditionally Free Of Duty Under Item 306.00, Tariff Schedules Of The United States, Or Wastes, Noils, Or Yarns Produced Therefrom", has been abolished, requiring amendments to section 10.94(e) and 10.95(d), Customs Regulations (19 CFR 10.94(e), 10.95(d)), relating to the recordkeeping of enumerated articles of wool and hair. Customs Form 7531-A was abolished in 1981 when such articles were made conditinally free and duty suspended through 1983.

7. Sections 10.114 through 10.119, Customs Regulations (19 CFR 10.114-10.119), relating to instruments and apparatus imported for educational and scientific institutions, have been superseded by amendments to the Department of Commerce regulations set forth in 15 CFR Part 301, which were published in the Federal Register on July 28, 1982 (47 FR 32515). Accordingly, Part 10, Customs Regulations (19 CFR Part 10), is being amended by revising section 10.114 and removing sections 10.115 through 10.119.

8. Sections 4591, 4812, and 4831, Internal Revenue Code of 1954 and the regulations of the Internal Revenue Service (26 CFR Part 45, Subparts E, G, and H, respectively), governing the packing and stamping of oleomargarine, adulterated butter, and filled cheese have been repealed by Pub. L. 94-455 and 93-490. Accordingly, section 11.5, Customs Regulations (19 CFR 11.5), which refers to those laws, is being removed.

9. Section 141.11(b), Customs Regulations (19 CFR 141.11(b)), relating to the release of merchandise directly to common carriers and right of entry by such carriers, is being amended to reflect changes in entry procedures as a result of Public Law 95-410, the

"Customs Procedural Reform and Simplification Act of 1978", which made numerous changes in laws administered by Customs relating to the entry of imported merchandise. A document amending the Customs Regulations to establish new procedures needed to reflect these changes was published as T.D. 79–221 in the Federal Register on August 9, 1979 (44 FR 46794).

One of the regulations changes made by T.D. 79–221 set forth a revised entry concept under which the documentation necessary to obtain the release of merchandise is the "entry." The additional documentation necessary to appraise and classify the merchandise and to collect accurate statistics is designated the "entry summary" is required to be filed, with estimated duties attached, within 10 working days after the time of entry.

Section 141.11(b) presently provides that delivery of merchandise by the carrier will be deemed the appropiate certificate required by 484(h), Tariff Act of 1930, as amended (19 U.S.C. 1484(h)), in the case of immediate delivery or when the entry is made with the appropriate duties deposited. To conform the regulations to the law, the language in section 141.11(b) must be modified to indicate that the delivery of the merchandise by the carrier will be deemed the appropriate certification by section 484(h), in the case of merchandise released with an entry, to be later followed by an entry summary. In addition, the language in section 141.11(b) must be modified to reflect the change in terminology when the complete entry package is filed with Customs and release of the merchandise is obtained under that package.

10. Section 141.83(a), Customs Regulations (19 CFR 141.83(a)), relating to the type of invoice required for various shipments of merchandise, is being amended by removing the reference to paragraph (c) and substituting (d) in its place. In addition, the language following "paragraph (c) of this section." is to be eliminated. These changes are necessary to conform the regulation to changes in entry requirements and procedures as a result of the enactment of Pub. L. 95–410.

11. Section 148.87(b), Customs Regulations (19 CFR 148.87(b)), lists the public international organizations currently entitled to free entry privileges. However, the list is not current because it does not contain the names of certain public international organizations entitled to these privileges. Accordingly, section 148.87(b) is being amended to add these organizations to the list of designated organizations.

12. Section 151.41, Customs Regulations (19 CFR 151.41), relating to the entry of petroleum and petroleum products, refers to the "current edition of the ASTM–IP Petroleum Measurement Tables (American Edition), *published* by the American Society for Testing and Materials * * *." (ASTM). The reference to the ASTM published version, which is the approved version, was inserted when ASTM was the organization publishing these tables. Presently,

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they are being published by the American Petroleum Institute. However, it is expected that other organizations may publish the tables in the future. Therefore, because they are the same mathematically regardless who publishes them, it is not necessary to identify the publisher in the regulation. Accordingly, section 151.41 is being amended by inserting "approved" for "published."

13. Section 151.42(b)(4), Customs Regulations (19 CFR 151.42(b)(4)), relating to controls on unlading and gauging petroleum and petroleum products, is being amended by inserting "conducted" for "performed." This change is being made because it conforms with a recent Customs ruling holding that shore tank gauges are "conducted" by public gaugers rather than "performed." The word "conduct" means to manage, to control, or to direct. Section 151.42(b)(4) applies to situations where public gaugers do not gauge the shore tank independently, but merely witness and certify gauges taken physically by the importing company's personnel. Thus, the gauge is done under the control and direction of the public gauger, who submits a report to Customs regarding the gauge. In effect, such gauges are "conducted" by the public gauger.

14. Customs Form 5561, "Notice of Action And/Or Request For Information," has been abolished and replaced by new Customs Form 28, "Request For Information," requiring an amendment to section 152.2, Customs Regulations (19 CFR 152.2), relating to the notification given to importers of increased duties.

15. Section 162.41, Customs Regulations (19 CFR 162.41), relating to merchandise entered by false invoice or declaration, which implements Pub. L. 95–410, is being amended because it omits language which would exclude entries filed before April 1, 1979. Sections 159.11 and 159.12, Customs Regulations, which also implement Pub. L. 95–410, contain the appropriate exclusionary language.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(3), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because these amendments will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), or any other statute.

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

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Amendments to the Regulations

Parts 4, 10, 11, 141, 148, 151, 152, and 162, Customs Regulations (19 CFR Parts 4, 10, 11, 141, 148, 151, 152, 162), are amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: November 9, 1982.
Robert E. Powis,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, November 29, 1982 (47 FR 53725)]

Part 4—Vessels in Foreign and Domestic Trades

1. Part 4 is amended by removing Notes 1-4 following the index.
2. Footnote 3 to section 4.2 is amended by removing "Tariff Act of 1930, sec. 401(n), as amended; 19 U.S.C. 1432a" from the second

paragraph and "Tariff Act of 1930, sec. 401(n), as amended; 19 U.S.C. 1401(n))" from the third paragraph, and inserting, in their place, "(Tariff Act of 1930, sec. 432a, as amended; 19 U.S.C. 1432a" and "(Tariff Act of 1930, sec. 401(k), as amended; 19 U.S.C. 1401(k))."

3. Section 4.95 is revised to read as follows:

§ 4.95 Records of entry and clearance of vessels.

Permanent records shall be prepared at each customhouse of all entries of vessels on Customs Form 1400 and of all clearances and permits to proceed on Customs Form 1401.[130] Whenever a vessel is diverted, as provided for in section 4.91(a) or (b), customs Form 1401 shall be amended to show the new destination. [MCLs 8/42; 22/42 FACLs 78, Supp. 2/42; 84, Supp. 2/42. TDs 50617, 52258, 52583, 52608, 52681, 52958, 53336, 54421.]

These records shall be open to public inspection.

4. Paragraph (a)(1) of section 4.98 is amended by removing "6 Receiving official bond not otherwise provided for" and marking it "[Reserved]."

5. Section 4.98 is further amended by removing paragraph (f) and marking it "[Reserved]."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.66(c) is amended by revising the first sentence to read as follows:

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedures on entry.

* * * * * * *

(c) Articles claimed to be exempt from duty under item 802.20 or 802.30, Tariff Schedules of the United States (19 U.S.C. 1202), may be returned free of duty without formal entry and without regard to the requirements of paragraph (a) or (b) of this section if: * * *

2. Section 10.66(c) is further amended by deleting footnote 62a.

3. Section 10.94(e) is revised to read as follows:

§ 10.94 Manufacturing records.

* * * * * * *

(e) In the case of preliminary processors, such as pullers, sorters, washers, scourers, or carbonizers, a transfer certificate on the appropriate Customs form, covering wool or hair processed and transferred by any one of them shall be submitted to the district director as an abstract of his records of manufacture. This method of recordkeeping may only be used if the processor has received custody (not ownership) of the wool or hair from a transferor who has been relieved by the district director of liability under bond for the

use of the wool, or hair in accordance with section 10.95(d). (Sec. 101, 76 Stat. 72; Sch. 3, Part 1C, Hdnote 6, Tariff Schedules of the United States) [T.D.'s 53266, 53399, 55565.]

4. The first three sentences of section 10.95(d) are revised to read as follows:

§ 10.95 Records and reports of enumerated articles of wool and hair delivered; transfer certificates.

* * * * * * *

(d) When the ownership of wool, or hair is transferred by one bonded manufacturer, processor, or dealer to another manufacturer, processor, or dealer the transfer shall be covered by a transfer certificate on the appropriate Customs form. When a transferor transfers custody (not ownership) of wool or hair, no transfer certificate is required unless the transferor in writing specifically requests the district director to be relieved of his liability under his bond.[86a] When the transfer is made by a dealer, the transfer certificate shall be supported by copies of processors invoices or reports (showing processing losses and net return) for any wool or hair processed outside the custody of the dealer. * * *

5. Section 10.114 is revised to read as follows:

§ 10.114 General provisions.

The consolidated regulations of the Commerce and Treasury Departments relating to the entry of instruments and apparatus for educational and scientific institutions are contained in 15 CFR Part 301.

6. Part 10 is amended by removing sections 10.115 through 10.119 and marking them "[Reserved]".

PART 11—PACKING AND STAMPING; MARKING

Part 11 is amended by removing section 11.5 and marking that section "[Reserved]."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 141—ENTRY OF MERCHANDISE

1. Section 141.11(b) is revised to read as follows:

§ 141.11 Evidence of right to make entry for importations by other than common carrier.

* * * * * * *

(b) *Merchandise released directly to carrier*—Where, in accordance with subsection (j) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), merchandise is released from Customs custody (either under immediate delivery procedures in accordance with the provisions of Subpart C of Part 142 of this chapter, or after an entry has been filed in accordance with Subpart A of Part 142 of this chapter, or after an entry summary, which shall serve as both

the entry and entry summary has been filed with estimated duties attached where appropriate in accordance with Subpart B of this chapter), to the carrier by whom the merchandise was brought to the port, the delivery of the merchandise by the carrier to the person filing the entry summary with estimated duties attached shall be deemed to be the certification required by subsection (h), section 484, Tariff Act of 1930. Customs responsibility under this optional entry procedure is limited to the collection of duties, and constitutes no representation whatsoever regarding the right of any person to obtain possession of the merchandise from the carrier. Consequently, no Customs official shall be liable to any person in respect to the delivery of merchandise released from Customs custody in accordance with the provisions of this paragraph.

2. Section 141.83(a) is revised to read as follows: Section 141.83 Type of invoice required.

(a) *Special Customs Invoice*—A Special Customs Invoice (Customs Form 5515) shall be filed for each shipment of merchandise (1) which is subject to a rate of duty dependent in any manner on value (including such merchandise entered under a conditionally free provision when all free entry documents and evidence required to establish the exemption from duty are not produced at the time of filing the entry summary), and (2) which is determined by the district director to have an aggregate purchase price over $500, including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States, or in the case of merchandise not imported in pursuance of a purchase or agreement to purchase, an aggregate value over $500 as determined in accordance with section 152.21 of this chapter. However, a special Customs invoice is not required for merchandise which is excepted from the requirements for both a special Customs invoice and a commercial invoice by paragraph (d) of this section.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Section 148.87(b) is amended as follows:

1. By inserting "African Development Fund" before "Asian Development Bank" in the column headed "Organization", "11977" in the opposite column under the heading "Executive Order", and "March 14, 1977" in the opposite column under the heading "Date".

2. By inserting "International Fertilizer Development Center" before "International Finance Corporation" in the column headed "Organization", "11977" in the opposite column under the heading "Executive Order", and "March 14, 1977" in the opposite column under the heading "Date".

3. By inserting "International Maritime Satellite Organization" before "International Monetary Fund" in the column headed "Or-

ganization", "12238" in the opposite column under the heading "Executive Order", and "April 22, 1980" in the opposite column under the heading "Date".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. Section 151.41 is amended by inserting "approved" in place of "published".

2. Section 151.42(b)(4) is amended by inserting "conducted" in place of "performed".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

Section 152.2 is amended by inserting "Customs Form 28" in place of "Customs Form 5561".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 162—RECORDKEEPING INSPECTION, SEARCH, AND SEIZURE

Section 162.41 is amended by adding a new subsection (d) to read as follows:

Section 162.41—Merchandise entered by false invoice, declaration, other document or statement subject to forfeiture.

* * * * * * *

(d) *Applicability*—The provisions of this section shall apply to entries of merchandise for consumption or withdrawals of merchandise for consumption made on or after April 1, 1979.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

(T.D. 82-225)

Synopses of drawback decisions

The following are synopses of drawback rates issued March 5, 1982, to June 8, 1982, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

Dated: November 22, 1982.

File: 215304

DRA-1-09

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Beatrice Foods Co., Inc. (Dri-Print Foils Div.)
Articles: Hot stamping foils
Merchandise: Polyester film
Factory: Rahway, NJ
Statement signed: March 30, 1982
Basis of claim: Appearing in, plus an allowance for the percentage of waste incurred in the month of manufacture of the exported articles
Rate forwarded to RC of Customs: New York, June 8, 1982
Revokes: T.D. 81-281-E

(B) Company: Bic Pen Corp.
Articles: Bic medium and fine point roller pens
Merchandise: Bic roller pen connector
Factory: Milford, CT
Statement signed: September 14, 1981
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, May 19, 1982

(C) Company: Carl Buddig and Co.
Articles: Turkey loaf; chicken loaf; sliced corned beef; smoked beef; smoked pastrami
Merchandise: Boneless beef; boneless turkey and turkey with bone; boneless chicken and chicken with bone
Factories: Chicago and South Holland, IL
Statement signed: January 8, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, May 11, 1982
Revokes: T.D. 73-26-B

(D) Company: Burlington Industries, Inc.
Articles: Bleached, dyed and/or mercerized piece goods
Merchandise: Piece goods
Factories: Cramerton, NC; Society Hill, SC; Altavista and Dublin, VA
Statement signed: February 9, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC of Customs in accordance with section 22.4(o)(2): New York, June 7, 1982
Revokes: T.D. 80-200-E

(E) Company: CHR Industries, Inc., T & F Div.

Articles: Fiberglass, Nomex, Kevlar, silicone, acrylic, rubber, and pressure sensitized fabrics, all of the foregoing Teflon-coated
Merchandise: Teflon dispersion (polytetrafluoroethylene PTFE)
Factory: Rolling Meadows, IL
Statement signed: April 21, 1982
Basis of claim: Used in
Rate issued by RC of Customs in accordance with section 22.4(o)(2): Chicago, May 12, 1982
Revokes: T.D. 79–214–W to cover successorship from T & F Industries, Inc.

(F) Company: Chevron Chemical Co.
Articles: Detergent alkylate (BAB) (Alkane 56); Alkane bottoms
Merchandise: Propylene tetramer
Factory: Richmond, CA
Statement signed: December 23, 1981
Basis of claim: Used in, with distribution to the products obtained, in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: San Francisco, April 21, 1982

(G) Company: Ciba-Geigy Corp.
Articles: Herbicides
Merchandise: Isopropyl alcohol
Factories: St. Gabriel, LA; McIntosh, AL
Statement signed: December 4, 1981
Basis of claim: Used in
Rate forwarded to RCs of Customs: New York and Baltimore, April 21, 1982

(H) Company: Thomas F. Draper Co., Inc.
Articles: Sorted grease wool; scoured wool; wool top
Merchandise: Grease wool; scoured wool
Factories: Through its agents operating under T.D. 55207(1)
Statement signed: February 16, 1982
Basis of claim: Used in, with distribution to the products obtained, in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: Boston, May 21, 1982

(I) Company: ESB Materials Co.
Articles: Type J electrolytic manganese dioxide; type A electrolytic manganese dioxide
Merchandise: Crude electrolytic manganese dioxide
Factory: Covington, TN
Statement signed: March 5, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: New Orleans, June 2, 1982

(J) Company: Elkem Metals Co.
Articles: Manganese aluminum briquets

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Merchandise: Electrolytic manganese metal flake and powder
Factories: Marietta, OH; Niagara Falls, NY
Statement signed: January 13, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, May 14, 1982
Revokes: T.D. 74-300-I (Union Carbide Corp.)

(K) Company: GTE Products Corp.
Articles: Color Phosphors
Merchandise: Yttrium oxide; Europium oxide; Terbium oxide; Gadolinium oxide; Cerium oxide technical grade; Cerium oxide pure grade; Germanium dioxide; Dysprosium oxide; Lanthanum oxide
Factory: Towanda, PA
Statement signed: April 9, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, April 29, 1982
Revokes: T.D.s 55550-I, 66-214-E, 68-68-T, 72-218-M, 76-235-O,78-254-N, and 79-192-K (GTE Sylvania Inc.)

(L) Company: General Mills, Inc.
Articles: Cake mixes, wheat flour, blended and graded wheat, breakfast cereals and other food products
Merchandise: Hard refined sugar, wheat flour, shortening, egg whites and yolks, milk, coconut oil, coconut-peanut oil, soybean oil, oat flour, vegetable oil, tomato powder, onion powder, chopped onion, macaroni, egg noodles, wheat, dark brown sugar, dried dates and instantized wheat flour
Factories: Various factories as listed in manufacturer's statement
Statement signed: March 30, 1982
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation as to wheat flour; appearing in as to all remaining merchandise
Rate issued by RC of Customs in accordance with section 22.4(o)(2): Chicago, May 19, 1982
Revokes: T.D. 77-292-H to cover additional factories

(M) Company: Harley-Davidson Motor Co., Inc.
Articles: Motorcycles
Merchandise: Motorcycle parts and parts for internal combustion engines
Factories: Milwaukee, Wauwatosa, and Tomahawk, WI: York, PA
Statement signed: May 4, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs in accordance with section 22.4(o)(2): Baltimore, May 18, 1982
Revokes: T.D. 81-190-L

(N) Company: Hercules Inc.
Articles: Parlon

Merchandise: Polyisoprene
Factory: Parlin, NJ
Statement signed: February 8, 1982
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: Baltimore, June 8, 1982
Revokes: T.D. 74-179-P

(O) Company: Inolex Chemical Co.
Articles: Isoproply Myristate
Merchandise: Myristic acid and isopropyl alcohol
Factory: Philadelphia, PA
Statement signed: May 17, 1982
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Baltimore, June 2, 1982
Revokes: T.D. 82-39-J

(P) Company: Kennametal Inc.
Articles: Tungsten metal powders; tungsten carbide powders; tungsten-titanium carbide powders; mixes of carbide powders; cemented tungsten carbide inserts, blanks, and wear parts; metalcutting and metalworking tools with carbide components; mixes of heavy metal tungsten powders; heavy metal tungsten metal parts, shapes, tools, and assemblies containing such
Merchandise: Tungsten source elements and intermediate tungsten source elements
Factories: Various factories as listed in manufacturer's statement
Statement signed: December 11, 1981
Basis of claim: Used in and Appearing in, depending on product manufactured
Rate forwarded to RC of Customs: New York, May 13, 1982
Revokes: T.D. 50586-F as amended by 51198-G, 51233-J, 51777-M, 52262-A, 54592-J, 56365-M, 66-12-0, and 72-230-V

(Q) Company: Eli Lilly and Co.
Articles: Tricyclazole (Beam or Bim) in intermediate, bulk, and finished product formulations
Merchandise: 4-methyl-2-hydrazino benzothiazole; 2-amino-4-methyl benzothiazole; tricyclazole technical; formic acid; hydrazine hydrate monohydrate
Factory: Lafayette, IN
Statement signed: January 7, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, April 29, 1982
Revokes: T.D.s80-280-E and 82-39-L

(R) Company: Quality Egg and Egg Products Co., Inc.
Articles: Frozen egg white; frozen egg yolk; frozen whole eggs
Merchandise: Shell (whole) chicken eggs

Factory: Dayton, NJ
Statement signed: September 18, 1981
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation
Rate forwarded to RC of Customs: New York, April 21, 1982

(S) Company: Quanex Corp., Atlantic Tube Div.
Articles: Cold drawn seamless and welded steel tubing
Merchandise: Hot rolled seamless and welded steel tubing
Factory: South Plainfield, NJ
Statement signed: October 3, 1981
Basis of claim: Used in
Rate issued by RC of Customs in accordance with section 22.4(o)(2): New York; March 5, 1982
Revokes: T.D. 73-88-X as amended by T.D. 77-244-W to cover successorship from Leland Tube Co., Inc.

(T) Company: RCA Corp.
Articles: Color television receivers
Merchandise: Color TV chassis
Factory: Bloomington, IN
Statement signed: March 25, 1982
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Chicago, June 2, 1982

(U) Company: Syntrex Inc.
Articles: Word processing systems
Merchandise: Floppy drives; cathode ray tubes
Factory: Eatontown, NJ
Statement signed: March 22, 1982
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, April 20, 1982

(V) Company: Tecumseh Products Co.
Articles: Hermetic compressors; condensing units; parts for air conditioning and refrigeration units
Merchandise: Hot rolled steel sheet; compressor upper housings; compressor lower housings; forged steel crankshaft blanks
Factories: Tecumseh, MI; Marion and Toledo, OH; Somerset, KY; Verona, MS
Statement signed: April 1, 1982
Basis of claim: Used in, less valuable waste; Used in (housings)
Rate forwarded to RCs of Customs: Houston, Chicago, and New York, May 21, 1982

(W) Company: Teledyne Industries, Inc., Teledyne Wah Chang Huntsville Div.
Articles: Tungsten powder; blended tungsten powder; tungsten carbide powder; blended tungsten carbide powder; tungsten ingots,

bars, tablets, rods, wire, studs, granules, rounds, electrodes, extrusions, and other fabrications
Merchandise: Tungsten concentrates (natural and artificial); ammonium paratungstate; ammonium metatungstate; tungstic oxide; tungsten powder; tungsten scrap (hard and soft); tungsten carbide scrap (hard and soft)
Factory: Huntsville, AL
Statement signed: May 6, 1982
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, June 8, 1982
Revokes: T.D. 78-470-Y as amended by T.D. 79-381-Y

(X) Company: UOP Inc.
Articles: Aluminum oxide rhenium catalyst
Merchandise: Unwrought rhenium metal; Perrhenic acid; Ammonium perrhenate
Factories: Shreveport, LA; McCook, IL
Statement signed: November 2, 1981
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, June 2, 1982

(Y) Company: Witco Chemical Corp.
Articles: Alkyl peroxyesters
Merchandise: Phosphorus trichloride
Factories: Richmond, CA; Marshall, TX
Statement signed: March 31, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, May 26, 1982

(Z) Company: Witco Chemical Corp.
Articles: Alkyl polyester—LYP-97-F
Merchandise: Lauric acid
Factories: Richmond, CA; Marshall, TX
Statement signed: March 31, 1982
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, May 26, 1982

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 101

PROPOSED CUSTOMS REGULATIONS AMENDMENT RELATING TO THE CUSTOMS FIELD ORGANIZATION; NOTICE OF PROPOSED CHANGE IN HOURS OF SERVICE AT A CUSTOMS PORT OF ENTRY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; notice of change in hours of service.

SUMMARY: This document proposes to amend the Customs Regulations by deleting Lochiel, Arizona, from the list of designated Customs stations. This document also gives notice of a proposed reduction in hours of service at the Customs port of entry of Naco, Arizona. The proposed hours of service at Naco, which is presently open 24 hours a day, are 6 a.m. to 10 p.m.

These proposed changes would enable Customs to obtain more efficient use of its personnel, facilities, and resources.

DATE: Comments must be received on or before (60 days from date of publication in the Federal Register).

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Renee DeAtley, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs ports of entry and stations are locations where Customs officers are placed for the purpose of accepting the entry of merchandise, collecting duties, examining baggage, clearing passengers, and enforcing the various provisions of the customs laws and other laws.

The significant differences between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries, of its officers or employees, for service rendered in connection with the entry or delivery of merchandise.

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to importers, carriers, and the public, it is proposed to amend Part 101, Customs Regulations (19 CFR Part 101), by deleting Lochiel, Arizona, from the list of designated Customs stations, and to reduce the hours of service at the Customs port of entry of Naco, Arizona.

Lochiel, Arizona

In Fiscal Year 1981, the station at Lochiel, Arizona, did not collect any revenue, did not make any entry examinations, and did not take any enforcement action. Approximately 17 vehicles a day, most of which are noncommercial, use Lochiel to cross the U.S./Mexican border. If Lochiel were to be closed, those vehicles would clear Customs at Nogales, Arizona, 10 miles from Lochiel. Because of the minimal use of Lochiel, the annual cost of operations of $41,218 is not justified. Accordingly, Customs believes that the Lochiel station should be closed.

Naco, Arizona

Section 101.6, Customs Regulations (19 CFR 101.6), provides that, with certain exceptions, each Customs office shall be open for the transaction of general Customs business between the hours of 8:30 a.m. and 5:00 p.m., on all days of the year. If, because of local conditions, different but equivalent hours are required to maintain adequate service, such hours shall be observed provided that the Commissioner of Customs approves them and provided further that a notice of business hours is prominently displayed at the principal entrance and in each public room of the Customs office.

The port of Naco, Arizona, which is presently open 24 hours a day, experiences very little activity between the hours of 10 p.m. and 6 a.m. Approximately 38 noncommercial vehicles use the Naco port of entry to cross the U.S./Mexican border during those hours, and many of those are repeat crossers. Travelers desiring clearance during these hours may clear Customs at Douglas, Arizona, a 24-hour port located 40 miles from Naco. The reduction in hours of service would result in an annual savings of $42,130. Accordingly, Customs believes that the hours of service of the Naco port should be changed to 6 a.m. to 10 p.m.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government Agencies).

Proposed Amendment to the Regulations

Part 101—General Provisions

It is proposed to amend section 101.4(c), Customs Regulations (19 CFR 101.4(c)), by removing Lochiel, Arizona, from the list of Customs stations.

Authority

This amendment is proposed pursuant to section 301, 80 Stat. 379, section 1, 37 Stat. 434, R.S. 251, as amended, section 624, 46 Stat. 759 (5 U.S.C. 301, 19 U.S.C. 1, 66, 1624).

Comments

Before adopting these changes, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

Because the proposed amendment relates to the organization of Customs it is not a regulation or rule subject to Executive Order 12291, pursuant to section 1(a)(3) of that E.O.

Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is hereby certified that, if promulgated, the proposal will not have a significant economic impact on a substantial number of small entities, although there may be some adverse consequences for the community of Santa Ariz, Mexico, (e.g. for reasons of convenience, limited health care access, etc.). Accordingly, this proposal is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nevertheless, written comments are specifically solicited on the effects on costs, profitability, or other economic factors of small entities affected, if any.

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: November 8, 1982.

ROBERT E. POWIS,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, November 29, 1982 (47 FR 53744)]

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U.S. Customs Service

General Notice

19 CFR Parts 7, 10, 22, 113, 145, 158, and 191

Drawback; Proposed Specialized and General Provisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to a Customs proposal to revise the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. A document inviting the public to comment on the proposal was published in the Federal Register on August 26, 1982 (47 FR 37563). Comments were to have been received on or before November 24, 1982. Several requests have been received to extend the period for the submission of comments claiming that because of the complexity of the issues involved, additional time is needed to prepare and submit thorough comments. Customs believes that the requests have merit. Accordingly, the period of time for the submission of written comments is extended to January 21, 1983.

DATE: Comments must be received on or before January 21, 1983.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Steuart, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5856).

Dated: November 22, 1982.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

[Published in the Federal Register, November 26, 1982 (47 FR 53402]

Notice of Application for Recordation of Trade Name "COMBE INCORPORATED"

Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "COMBE INCORPORATED," used by Combe Incorporated, a corporation organized under the laws of the State of Delaware, located at 1101 Westchester Avenue, White Plains, New York 10604.

The application states that the trade name is used in connection with the following merchandise manufactured in several foreign countries: hair coloring; toiletries; cosmetics; odor-destroying insoles; odor-destroying hosiery; denture adhesives; pharmaceutical creams, ointments and lotions; veterinary medications and shampoos; and hair care products. Various foreign subsidiaries are authorized to use the trade name. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229, in time to be received no later than 60 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

Dated: November 18, 1982.

DONALD W. LEWIS,
Director,
Entry Procedures and Penalties Division.

[Published in the Federal Register, November 23, 1982 (47 FR 52843)]

United States Court of Appeals for the Federal Circuit

ALCAN SALES, DIV. OF ALCAN ALUMINUM CORP., APPELLANT *v.* THE UNITED STATES, APPELLEE

Appeal No. 82–17

(Decided: November 18, 1982)

David O. Elliott argued for appellant. With him on the brief were *Rufus E. Jarman, Jr.*, *Michael A. Johnson* and *Barnes, Richardson & Colburn.*

David M. Cohen argued for appellee. With him on the brief was Assistant Attorney General *J. Paul McGrath.*

Before MARKEY, *Chief Judge,* BENNETT and SMITH, *Circuit Judges.*

BENNETT, *Circuit Judge.*

This is an appeal from a decision of the United States Court of International Trade, *Alcan Sales* v. *United States,* 528 F. Supp. 1159 (Ct. Int'l Trade 1981). The court below held that Proclamation No. 4074, 85 Stat. 926 (1971), which established a 10-percent ad valorem duty on dutiable imports, was a valid exercise of the authority delegated to the President by the Trading With the Enemy Act, 50 U.S.C. app. § 5(b), to regulate imports at a time of declared national emergency. The court below also held that section 9(a) of the Trading With the Enemy Act does not require the government to return the surcharges collected under Presidential Proclamation 4074, as that section is inapplicable to the regulatory provisions of section 5(b). The United States Court of International Trade therefore granted the government's motion for summary judgment. We *affirm.*

During the summer of 1971, the United States was faced with an economic crisis. The nation suffered under an exceptionally severe and worsening balance of payments deficit. The gold reserve backing of the U.S. dollar had dropped from $17.8 billion in 1960 to less than $10.4 billion in June of 1971, reflecting a growing lack of confidence in the U.S. dollar abroad. Foreign exchange rates were being controlled by some of our major trading partners in such a way as to overvalue the U.S. dollar. That action, by stimulating

U.S. imports and restraining U.S. exports, contributed substantially to the balance of payments deficit.[1]

As part of a program to deal with this economic crisis, the President, on August 15, 1971, issued Proclamation No. 4074, 85 Stat. 926, which established an additional 10-percent ad valorem duty upon dutiable articles imported into the United States.[2] Less than 5 months later, on December 20, 1971, the surcharge program was terminated by Proclamation No. 4098, 3 C.F.R. 116 (1971 Comp.). The reason for ending the surcharge program was the formulation of a multilateral agreement (the "Smithsonian Agreement") among the major industrial nations that gave promise of ending the balance of payments problem. *See United States* v. *Yoshida International, Inc.*, 526 F.2d 560, 568–69 (CCPA 1975).

Unfortunately, the termination of Presidential Proclamation 4074 did not end the controversy surrounding the surcharge program. Many importers subsequently challenged the validity of Proclamation 4074, alleging that it was an *ultra vires* presidential act. The United States Court of Customs and Patent Appeals, however, held that Presidential Proclamation 4074 was a valid exercise of the authority delegated to the President by section 5(b) of the Trading With the Enemy Act[3] (TWEA) to regulate imports at a time of declared national emergency. *See Alcan Sales* v. *United*

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[1] The preceding account of the economic situation facing the United States in 1971 is taken verbatim from *United States* v. *Yoshida Int'l, Inc.*, 526 F.2d 560, 567 (CCPA 1975) (footnotes omitted).

[2] Presidential Proclamation 4074 states in relevant part that:

"Whereas, there has been a prolonged decline in the international monetary reserves of the United States, and our trade and international competitive position is seriously threatened and, as a result, our continued ability to assure our security could be impaired;

"Whereas, the balance of payments position of the United States requires the imposition of a surcharge on dutiable imports;

* * * * * *

"A. I hereby declare a national emergency during which I call upon the public and private sector to make the efforts necessary to strengthen the international economic position of the United States.

"B. (1) I hereby terminate in part for such period as may be necessary and modify prior Presidential Proclamations which carry out trade agreements insofar as such proclamations are inconsistent with, or proclaim duties different from, those made effective pursuant to the terms of this Proclamation.

"(2) Such proclamations are suspended only insofar as is required to assess a surcharge in the form of a supplemental duty amounting to 10 percent ad valorem. Such supplemental duty shall be imposed on all dutiable articles * * * provided, however, that if the imposition of an additional duty of 10 percent ad valorem would cause the total duty or charge payable to exceed the total duty or charge payable at the rate prescribed in column 2 of the Tariff Schedules of the United States, then the column 2 rate shall apply." [Proclamation No. 4074, 85 Stat. 926, 926–27 (1971).]

[3] Section 5(b) provides in relevant part that:

"(b)(1) During the time of war or during any othr period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

"(A) Investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

"(B) Investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

"by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States * * * ." [50 U.S.C. app. § 5(b) (1976).]

Section 5(b) was amended in 1977, Act of Dec. 28, 1977, Pub. L. No. 95–223, tit. I, §§ 101(a), 102, 103(b), 91 Stat. 1625, 1625–26, but the amendment is not pertinent to the issues presented in this litigation.

States, 534 F.2d 920 (CCPA), *cert. denied,* 429 U.S. 986 (1976); *Yoshida,* 526 F.2d at 584.

Following the *Yoshida* and *Alcan Sales* decisions, several importers initiated a new wave of litigation in the federal district courts. The basis for their actions was section 9(a) of the TWEA, which permits persons who are not enemies or allies of enemies to seek recovery of property seized under the TWEA.[4] Those plaintiffs contended that section 9(a) requires the government to return property taken under either the seizure or regulatory provisions of section 5(b) upon a showing of no enemy interest in that property. The courts that were confronted with this issue, however, held that section 9(a) does not apply to the regulatory provisions of section 5(b). *See Cornet Stores* v. *Morton,* 632 F.2d 96 (9th Cir. 1980), *cert. denied,* 451 U.S. 937 (1981); *Henry Pollak, Inc.* v. *Blumenthal,* 444 F. Supp. 56 (D.D.C. 1977), *aff'd mem.,* 593 F.2d 1371 (D.C. Cir. 1979), *cert. denied,* 444 U.S. 836 (1979). Because no section 9(a) claim was presented, the *Cornet Stores* and *Henry Pollak* courts held that litigation involving the surcharge program did not belong in district court, but was within the exclusive jurisdiction of the United States Customs Court under 28 U.S.C. § 1582 (1976).[5]

In response to these decisions, Alcan Sales instituted this action in the United States Court of International Trade (formerly the United States Customs Court) seeking the return of its surcharge payments under section 9(a) of the TWEA. The court held that the TWEA confers two distinct and independent powers upon the President: (1) the power to regulate; and (2) the power to seize and hold property. *See Alcan Sales* v. *United States,* 528 F. Supp. 1159, 1162 (Ct. Int'l Trade 1981). Section 9(a)'s application, however, is limited to actions involving an exercise of the President's seizure or vesting powers under section 5(b). Because the import surcharge program was authorized by section 5(b)'s regulatory provisions, it did not constitute a vesting within the meaning of section 5(b). Therefore, the court held that section 9(a) was inapplicable to appellant's action. The court did not purport to have any jurisdiction under section 9(a), and indeed it does not. If a section 9(a) claim had been presented, then appellant's exclusive remedy would have

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[4] Section 9(a) provides in relevant part that:

"(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States * * * may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the United States District Court for the District of Columbia or in the district court of the United States for the district in which such claimant resides * * *." [50 U.S.C. app. § 9(a) (1976).]

[5] The Customs Courts Act of 1980 changed the name of the United States Customs Court to the United States Court of International Trade. Also, section 28 U.S.C. § 1582 was repealed and replaced by 28 U.S.C. § 1581. *See* Customs Courts Act of 1980, Pub. L. No. 96-417, §§ 101, 201, 94 Stat. 1727, 1727-29.

been in the Federal district courts. *See* 50 U.S.C. app. §§ 7(c), 9(a) (1976).

The issue in this appeal is whether section 9(a) of the Trading With the Enemy Act (TWEA) is applicable to those provisions of section 5(b) of the TWEA that empower the President to regulate foreign trade. Every court to consider this issue has determined that it is not. *See Cornet Stores,* 632 F.2d at 97-98, 98 n.2; *Pollak,* 444 F. Supp. at 59 n.2. We agree with those decisions as well as the one now under review.

When the Trading With the Enemy Act was first enacted in 1917 its application was restricted to wartime. *See* Act of Oct. 6, 1917, ch. 106, 40 Stat. 411. The purpose of the Act was to enable the President to prohibit trade with wartime enemies and to seize enemy-owned property. *See Pollak,* 444 F. Supp. at 59. In order to insure that U.S. citizens would have a remedy if their property was seized under the TWEA, Congress enacted section 9(a), which established an administrative and judicial procedure by which persons who were not enemies or allies of enemies could seek recovery of property seized under the TWEA. In 1933 and again in 1941, however, Congress greatly expanded the scope of the President's powers under section 5(b) of the TWEA. *See* Act of March 9, 1933, ch. 1, § 2, 48 Stat. 1, 1-2; Act of Dec. 18, 1941, ch. 593, tit. III, § 301, 55 Stat. 838, 839-40. Under the amendments to section 5(b), the President was delegated extensive powers to regulate international economic transactions involving property in which any foreign nation or citizen, friendly or otherwise, had an interest. These powers could be exercised during either a war or period of declared national emergency. Therefore, after 1941, it was clear that section 5(b) conferred two distinct and independent powers upon the President: (1) the power to seize or "vest" property; and (2) the power to regulate.

Although Congress chose to expand significantly the President's authority under section 5(b), it did not concurrently amend the recovery provisions of section 9(a). For that reason, section 9(a) must be construed to apply as originally enacted—to those provisions of section 5(b) that empower the President to vest property. *See Cornet Stores,* 632 F.2d at 97.

Common sense also dictates that section 9(a) retain its original limitations. In amending section 5(b), Congress delegated broad and extensive powers to the President in order that he could deal effectively with national emergency situations. *See Yoshida,* 526 F.2d at 573. Extending section 9(a) to the regulatory provisions of section 5(b), however, might severely hinder the President's ability to deal effectively with a national emergency. In this case, for example, it is doubtful that the surcharge program imposed by Presidential Proclamation 4074 would have been effective if section 9(a) required the government to return the surcharges it collected. The purpose of a surcharge on imports is to decrease the demand for

foreign goods by increasing the price to consumers. If importers know that they will receive a refund of any surcharges paid, then they will be less likely to pass the cost of the surcharge through to consumers. A surcharge program subject to section 9(a) would thus be less effective in decreasing the demand for foreign goods and alleviating a balance of payments problem. Therefore, it seems highly unlikely that Congress would give the President broad regulatory powers under section 5(b) in order that he could deal effectively with national emergencies and then subject these powers to section 9(a), which might render the delegated powers useless.

Thus, section 9(a) "confers jurisdiction upon the federal district courts only to consider challenges to the wartime applications of Section 5(b) [*i.e.,* the seizure or vesting of property] and to identifications of parties as 'enemies'." *Pollak,* 444 F. Supp. at 60 n.2. It is inapplicable to a surcharge program on imports that is authorized by the regulatory provisions of section 5(b). *See Cornet Stores,* 632 F.2d at 97–98, 98 n.2; *Pollak,* 444 F. Supp. at 60 n.2.

Although section 9(a) does not apply to the regulatory provisions of section 5(b), it does not necessarily follow that the United States Court of International Trade is the proper forum for all actions arising under the regulatory provisions of section 5(b).[6] A court must first characterize the action. Only if the section 5(b) action bears a "substantial relation to traditional customs purposes," *Jerlian Watch Co.* v. *United States,* 597 F.2d 687, 691 (9th Cir. 1979), will the United States Court of International Trade have jurisdiction. As this is the case here, litigation involving the import surcharge program is within the exclusive jurisdiction of the United States Court of International Trade. *See Cornet Stores,* 632 F.2d at 100; *Pollak,* 444 F. Supp. at 59–60. Prior litigation under former section 1582 (now section 1581)[7] has conclusively established that Presidential Proclamation 4074 was a valid exercise of the authority delegated to the President under the regulatory provisions of section 5(b). *See Alcan Sales,* 534 F.2d at 920; *Yoshida,* 526 F.2d at 584.

Appellant now contends, however, that the United States Court of International Trade has jurisdiction under section 1581 to hear its section 9(a) claim and to return its surcharge payments notwithstanding the validity of Presidential Proclamation 4074. This argument is without merit. For the reasons stated above, section 9(a) is irrelevant to litigation involving an import surcharge program established under the regulatory provisions of section 5(b). In fact,

[6] The regulatory provisions of section 5(b) delegate broad and varied powers to the President, which permit the President to engage in a wide range of economic regulations. Some of the President's regulatory actions may come within the jurisdiction of the federal district courts, while others may be within the exclusive jurisdiction of the United States Court of International Trade. *See Henry Pollak, Inc.* v. *Blumenthal,* 444 F. Supp. 56, 59 (D.D.C. 1977), *aff'd mem.,* 593 F.2d 1371 (D.C. Cir. 1979), *cert. denied,* 444 U.S. 836 (1979).

[7] Section 1581 contains the major jurisdictional grants of authority to the United States Court of International Trade. It substantially restates, with some modifications, the jurisdictional authority of the former United States Customs Court under 28 U.S.C. § 1582. *See* H.R. REP. NO. 1235, 96th Cong., 2d Sess. 44–48, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 3729, 3755–60.

the inapplicability of section 9(a) to section 5(b)'s regulatory provisions is one of the reasons why the United States Court of International Trade has exclusive jurisdiction over this matter.

Therefore, after thorough consideration of the parties' submissions and after oral argument, the decision of the United States Court of International Trade granting the government's motion for summary judgment is affirmed.

392-324 O - 82 - 5

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 82-95)

SHAW INDUSTRIES, INC., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 79-8-01282

Textile Machines—Finishing Machines

LEGISLATIVE INTENT

The primary source for the meaning of a statute must be derived from the wording of the statute itself. *Andrus* v. *Allard*, 444 U.S. 51 (1979); *The United States* v. *H. Rosenthal Co.*, 57 CCPA 8, C.A.D. 1236, 609 F.2d 999 (1979).

PRESUMPTIONS

A presumption of correctness favors Customs' classification. *Atlantic Aluminum & Metal Distribution, Inc.* v. *United States*, 47 CCPA 88, C.A.D. 735 (1960); *J. E. Bernard Co.* v. *United States*, 81 Cust. Ct. 60, C.D. 4766 (1978); 28 U.S.C. § 2639.

TEXTILE MACHINERY—FINISHING AND PREPARING MACHINES

Where a textile machine may be classified as both a preparing machine pursuant to item 670.12 and a finishing machine pursuant to item 670.43, the machine should be classified as a finishing machine since item 670.43 is more difficult to satisfy and consequently more specifically describes the machine. General Interpretive Rule 10(c). Furthermore, it is settled that where two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest. General Interpretive Rules, Rule 10(d).

Textile machinery for processing yarn, known as the *Superba*, imported from France, was classified by Customs as a finishing machine, other, under TSUS item 670.43. Importer contended that it should be classified as textile machinery for preparing yarns under TSUS item 670.12.

HELD

The statutory language evinces a clear legislative intent that the *Superba* is a finishing machine relative to the specific yarn in issue and therefore properly classifiable under item 670.43. The yarn that has undergone the *Superba* process has different physical properties, visually apparent, than the yarn introduced into the *Superba*. Without this special process the yarn would not be fit for the sole intended use in carpet manufacturing. While the *Superba*

also qualifies as a textile machine for preparing yarns under item 670.12, item 670.43 more specifically or, at minimum, equally describes it and therefore is the correct tariff provision for classification. General Rules of Interpretation, Rules 10(c) and 10(d).

[Judgment for Defendant.]

(Decided November 8, 1982)

Powell, Goldstein, Frazer & Murphy (*Mark R. Eaton* on the briefs); *Busby, Rehm & Leonard* (*John B. Rehm* on the briefs) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Madeline B. Kufliek* on the brief), for the defendant.

LANDIS, Judge: This action is before the court for decision on stipulated facts, both plaintiffs and defendant having filed briefs. Plaintiffs have argued to reclassify certain merchandise known as the *Superba* TVP yarn processing machines (*Superba*). Defendant filed a brief in response to plaintiffs argument and plaintiffs filed a brief in reply thereto. The court signed and ordered filed the stipulation of facts relating to the imported merchandise.

The pertinent statutory provisions, found in the Tariff Schedules of the United States (TSUS) Schedule 6, Part 4, Subpart E, are as follows:

SCHEDULE 6.—METALS AND METAL PRODUCTS

PART 4.—MACHINERY AND MECHANICAL EQUIPMENT

SUBPART E.—TEXTILE MACHINES; LAUNDRY AND DRY-CLEANING MACHINES; SEWING MACHINES

CLASSIFIED:			
	Machinery for washing, cleaning, drying, bleaching, dyeing, dressing, finishing or coating textile filaments, yarns, fabrics or made-up textile articles (including laundry and dry-cleaning machinery), and part of such machinery:		
670.43	Other		8% ad val.
	Machinery:		
06	Clothes dryers	No	
14	Other household and Laundry type machinery.		
18	Other machinery:		
	Bleaching, dyeing, washing, and cleaning machines.	No	
.....	Finishing, dressing, coating, and drying machines:		

	27	Transfer printing machines for textiles.	No
	28	Other	X
Claimed:			
670.12		Textile reeling or winding machines; textile beaming, warping, or slashing machines, and other textile machines for preparing yarns to be woven, knit, braided, or otherwise made into textile fabrics or other textile articles.	7% ad val.
	20	Reeling or winding machines	No.
	40	Other	No.

General Headnotes and Rules of Interpretation:

Rule 10(c) which reads in pertinent part:

> (c) An imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it.

Rule 10(d) which reads in pertinent part:

> (d) If two or more tariff descriptions are equally applicable to an article such article shall be subject to duty under the description for which the original statutory rate is highest, and, should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules.

The major issues presented for decision are whether the *Superba* is a textile machine for preparing yarns to be woven or otherwise made into textile fabrics or textile articles; whether the *Superba* constitutes other machinery for finishing textile filaments or yarns; or, if the *Superba* constitutes both a preparer and finisher of yarns under TSUS, which tariff provision more specifically describes it.

Plaintiffs' sole claim is that the *Superba* is a textile machine used to prepare yarns to be made into other textile articles. Defendant's sole contention is that the *Superba* is a machine designed to finish textile yarns. A review of the stipulation indicates that there are no material facts to be tried and that the issues present-

ed involve only questions of law to be properly decided by the court without a full trial on the merits. *Farr Man and Co., Inc. et ano.* v. *The United States,* 4 Ct. Int'l. Trade —, Slip Op. 82-61 (July 26, 1982); *Schoenfeld & Sons, Inc.* v. *United States,* 3 Ct. Int'l. Trade —, Slip Op. 82-33 (April 30, 1982).

The underlying stipulation indicates that the *Superba,* a product of France, was classified pursuant to TSUS item 670.43 although plaintiffs' claim proper classification to be pursuant to TSUS item 670.12. The *Superba* employs a wet steam application to process yarn. The *Superba* processes yarn which is used exclusively in the manufacture of tufted carpet. Carpeting yarn is composed of several separate strands of fibers, usually of synthetic nylon fibers, which are twisted and joined together (plied).

Once the twist has been applied and the separate strands plied, a heat-setting process is necessary in order to "lock in" or "set" the twist and the ply. The "locking" or "setting" of the twist and the ply gives the yarn a definitive dimensional stability, produces a uniform and consistent yarn for carpet, gives the yarn a fuller appearance and allows the yarn to maintain its surface appearance despite the normal wear and tear which is applied to carpets.

The *Superba* provides a continuous, labor-saving method of heat-setting and thereby locking-in the twist and the ply through the controlled application of wet steam. The object of the heat setting is mainly:

a. To set definitely the twist of the yarn (the yarn after heat setting must behave like a steel spring);

b. To improve the dyeing affinity of the fibre;

c. To set the texturation crimp of the fibre;

d. To level eventually the dyeing affinity of the yarn, affinity which can be irregular further to a thermic process (hot air);

e. To develop to a maximum the bulk of the yarn and to give it thus the greatest possible "covering" power.

After the heat setting by the *Superba* the yarn is fully *prepared* for use in the carpet manufacturing process as the heat setting by the *Superba* is the *last* processing step performed upon the yarn.

The stipulation states that the *Superba* exposes the yarn to no chemicals that dye, bleach, dress, or coat the yarn in any fashion nor is it designed or used to clean or wash the yarn in any manner. The operation of the *Superba* involves the application of wet steam to the yarn and through a continuous heat-setting process the yarn is returned to its dry state.

Under well established Customs' jurisprudence, plaintiffs shoulder the dual burden of proving that the classification by Customs' is erroneous and that its claimed classification is correct. *Hawaiian Motor Company* v. *United States,* 82 Cust. Ct. 70, C.D. 4790, 473 F. Supp. 787 (1979), aff'd, 67 CCPA 42, C.A.D. 1241, 617 F. 2d 286 (1980); *Merry Mary Fabrics, Inc.* v. *United States,* 1 Ct. Int'l Trade 13 (1980). Thus, it is insufficient that plaintiffs merely demonstrate

that its claimed classification is correct. There must be an additional showing that Customs' classification is erroneous. Without both, plaintiffs cannot succeed. It is against this background that the court reviews the relevant classifications herein.

A review of the competing statutes, TSUS items 670.12 and 670.43, indicates the precise elements necessary for classification of the particular merchandise of this action.

TSUS item 670.12 requires that the *Superba* be (1) a textile machine, (2) used to prepare yarns that, (3) are to be made into textile articles or fabrics. Also the *Superba,* based upon its description and functions in paragraph fourteen (14) of the stipulation, is not a reeling or winding machine and therefore, if classifiable under TSUS item 670.12 would be under the *other* category.

For classification pursuant to item 670.43 the *Superba* must be (1) textile machinery, (2) for finishing, (3) yarns.

There is no dispute that the *Superba* constitutes textile machinery as both TSUS items, classified and claimed, fall under the headnote for Subpart E, Textile Machines . . . Likewise, there is no dispute that the subject matter processed by the *Superba* is yarn.[1]

In examining item 670.12 the court finds that the *Superba* meets all qualifications for classification thereunder. It is a textile machine. It prepares yarn, Stipulation paragraph ten (10). The yarn prepared by the *Superba* is used exclusively in the manufacture of tufted carpet which unarguably is a textile article. Thus, the *Superba* satisfies the three previously enumerated parameters necessary for classification under item 670.12 and plaintiffs therefore have satisfied one-half of their burden by showing their claimed classification is correct.

Turning to Customs' classification pursuant to 670.43 it is noted that a presumption of correctness favors Customs' classification. *Atlantic Aluminum & Metal Distribution, Inc.* v. *United States,* 47 CCPA 88, C.A.D. 735 (1960); *J. E. Bernard Co.* v. *United States,* 81 Cust. Ct. 60, C.D. 4766 (1978); 28 U.S.C. § 2639. As aforementioned in the discussion of classifying the *Superba* pursuant to item 670.12 there is no dispute that it is a textile machine which processes yarn. This satisifies two of the three qualifications for classification under item 670.43. The only remaining qualification is whether the *Superba* is used for finishing yarn.

The Stipulation is silent as to the use of the term finishing *per se.* However, the Stipulation does state that, "The heat setting by *Superba* is the *last processing step performed upon the yarn.*", Stipulation paragraph ten (10) (emphasis supplied). Plaintiffs argue that the *Superba* process is merely an intermediate or preparing process in the overall manufacturing scheme of carpeting. In this light their basic contention is that the *Superba* does nothing as to the creation of yarn as the yarn is complete *per se* before undergoing

[1] Stipulation paragraphs five (5) and six (6).

the *Superba* process. In support of this plaintiffs point to several definitions found in various lexicons.[2]

Plaintiffs argue that defendant misconceives the definition of finishing as finishing applies to fabric or cloth of which yarn is neither.

Plaintiffs attempt to make the further argument based on the doctrine of *noscitur a sociis* that the term finishing is used in direct conjunction with the word coating in item 670.43. Thus, plaintiffs try to show that the wording in item 670.43 either implies a specific function to achieve a desired result (washing, cleaning, drying) or a chemical change to the yarn (bleaching, dyeing, dressing, finishing).

Plaintiffs further argue that legislative history shows that item 670.43 was not intended to cover a machine like the *Superba*. Specifically they make reference to *The Tariff Classification Study Explanatory and Background Materials*, concerning Subpart E of Part 4 of Schedule 6,: Vol. 6, p. 267.[3] Simply put, plaintiffs contend that since yarn is created early on in the overall manufacturing process of carpeting it should be classified in the early stages of Subpart E and not in the later stages thereof. Plaintiffs, naturally, are assuming that it is overall textile production of carpeting and not yarn that is in issue.

Plaintiffs first argument that finishing applies to fabric, cloth or the production of completed textile articles is at the outset quite convincing in view of the various lexicographic definitions. However, the primary source for the meaning of a statute must be derived from the wording of the statute itself. *Andrus* v. *Allard*, 444 U.S. 51 (1979); *The United States* v. *H. Rosenthal Co.*, 67 CCPA 8, C.A.D. 1236, 609 F.2d 999 (1979). Item 670.43 specifically mentions

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[2] Actually, plaintiffs attack the lexicographic definitions cited by defendant and attempt to turn-the-tables by showing these definitions actually support plaintiffs' position.

The first definition is found in Linton, *The Modern Textile and Apparel Dictionary* (4th Revised Enlarged Edition, 1973) at p. 208:

> Finishing. 1. The art and science of making materials presentable to the consuming public. Cloth is converted from the grey goods state, as it comes from the loom, into a fair, medium, good, or excellent material ready for usage. Textile fabrics are "made in the finishing," since there has never been a perfect yard of cloth, free from defects of some sort, woven. Finishing takes care of these defects in the goods. 2. *The final processing*, such as bleaching, dyeing, pressing, printing, water-proofing. 3. The steps in the treatment of rayon or acetate from the time it is spun to its final form for shipment to the user—washing, stretching and drying or storing, twisting, and spooling—when cakes are not used—reeling and lacing, resulpherizing, washing, bleaching, drying, sorting and grading, packing, etc. 4. *Generally speaking, the final operation in any process of manufacture.*

The second set of definitions are found in *Webster's Third New International Dictionary*, Unabridged (1968) at pp. 853 and 854.

> 1. *Finish:*
> 1a To bring to an end: arrive at the end of: TERMINATE, COMPLETE
> c To serve as the close or last item of
> 2a To expend the final labors on: bring to completion or issue
> b(1) To give (cloth) special characteristics that improve appearance and usefulness by processing (as mercerizing, fulling, calendering, embossing)
> 2. *Finish:*
> f The final treatment or coating of a surface.
> *Finishing.* The act or process of completing: the final work upon or ornamentation of a thing: *Specif:* The processing applied to cloth after it is taken from the loom.

[3] This classification study in pertinent part reads: "The proposed provisions of this subpart do not involve any significant rate changes. It is believed, however, that the provisions have been clarified by better organization and certain changes in language. In general, the provisions in this part for machines are organized so that they parallel to the extent possible, the organization of the provisions for textile fibers and textile products in proposed Schedule 3. In other words, the machines are provided for to the extent possible in the order of their use in the production of textile articles."

yarn along with other stages of textile production. It also specifically mentions a wide variety of different processes varying from the use of water and heat to chemical applications. There is *no* differentiation as to what process is applicable to what stage of production or vice-versa. Therefore, yarn as well as fabric or cloth or completed textile articles may all be subject to a finishing process. Nothing in the evidence of record indicates that yarn cannot be subject to a finishing process.

The fact that yarn may be subject to a finishing process is further borne out by reference to several cases cited by plaintiffs and defendant. In *National Carloading Corporation* v. *United States*, 47 Cust. Ct. 144, C.D. 2294 (1961), cited by plaintiffs and defendant, the court stated at 147, "Obviously, a finishing operation on a fabric would be different from a finishing operation applied to yarn". The implication is manifest that yarn may be subject to a finishing operation although a different finishing operation than fabric.

Similarly, in a case cited by defendant, *United States* v. *American Textile Engineering, Inc.*, 26 CCPA (Customs) 48, T.D. 49597 (1938) the court stated: "There are also machines for finishing or conditioning yarns". True, *American Textile* involved a chemical type of finishing but nonetheless it does indicate that yarns are capable of being subject to a finishing process.

Plaintiffs attempt to narrow the scope of item 670.43. However, the clear wording of that statute indicates a contrary legislative intent. The finishing process can apply to any stage of production, whether it be from the initial production of textile fibers to be spun into yarn or whether it be on the finalized textile product.

Plaintiffs subsequent argument based upon the doctrine of *noscitur a sociis* is meritless. The various processes stated in item 670.43 are used in the disjunctive. All stand alone without affinity to the others. There is no basis for associating finishing with coating other than that they are both processes. There is no rational reason to associate finishing with coating more than associating finishing with washing, cleaning, etc. The *Superba* process is a specific function employed to achieve a desired result as it sets the twist of the yarn and the texturation crimp of the fibre along with other results. (Stipulation paragraph nine (9)).

Plaintiffs final argument that the legislative history of *Subpart E* precludes classification of the *Superba* in item 670.43 is misguided. The key phrase in the legislative history cited by plaintiffs[4] states: "In other words, the machines are provided for *to the extent possible* in the order of their use in the production of textile articles." (Emphasis supplied).

Reviewing *Subpart E* it is evident that it follows the format indicated in the legislative history. Thus, the headnote for items 670.02 through 670.06 deals with preparing fibers for spinning, etc. This is generally the earliest stage in the manufacturing process. This is

[4] See footnote 3, infra, for text of the complete pertinent section.

followed by the headnote governing 670.12 which deals with the preparing of yarns for weaving and various other functions. The following headnote governs item 670.14 through 670.29 and relates to weaving machines, where cloth and fabric are produced from yarn. The next headnote deals with felt and other specialty items which do not bear on this case.

Immediately following is the headnote here in issue which under a normal progression would deal only with finishing or other operations on the manufactured fabric or textile article. But here is where there is a departure from the sequence and the legislative history. Congress also included prior stages of production such as filaments and yarns to be subject to the various processing methods. It is axiomatic that Congress is presumed not to have used superfluous words in a statute. *Ameliotex, Inc.* v. *United States,* 65 CCPA 22, C.A.D. 1200, 565 F. 2d 674 (1977). The court cannot ignore the words filaments and yarns in item 670.43. No convincing arguments are set forth to the effect that yarn cannot be subject to a finishing process.

While it is true that yarn goes into the *Superba,* and yarn comes out of the *Superba*, the yarn that exits has different physical properties that are visually apparent. (Stipulation paragraph eight (8), "gives the *yarn* a fuller appearance and allows the *yarn* to maintain its surface appearance * * *." emphasis supplied; Stipulation paragraph nine (9) generally). The yarn is not complete for its intended use until it undergoes the *Superba* process.

Essentially, the *Superba* advances the yarn in condition *creating* a specific type of yarn with physical properties different from those of the yarn entering the *Superba*. This process is performed only before the yarn undergoes any carpet manufacturing process. Only after the *Superba* process is the yarn ready for use in the carpet manufacturing process. Stipulation paragraph eleven (11). This *specific yarn* required for carpeting is therefore finished (the last processing step, Stipulation paragraph ten (10)) by the *Superba* process.

Defendant has demonstrated that the *Superba* is a finishing machine relative to the yarn in issue classifiable under item 670.43. Plaintiffs have failed to prove otherwise but have shown that the *Superba* may also be considered a preparing machine classifiable under item 670.12. Where an imported article is described in two or more provisions of the tariff schedule it should be classified in the provision which most specifically describes it. General Interpretive Rules, Rule 10(c).

Reviewing the competing TSUS items the court finds that item 670.43 more specifically describes the *Superba* than item 670.12. A machine may only be considered a finishing machine where it performs the last or final process during a particular stage of production. Thus the number of finishing machines is limited in scope to the number of stages of production (filaments, yarns, fabrics, etc.).

Conversely, a machine may be considered a preparing machine during *any phase of any stage of production* in which it performs its function. It may be the initial phase, second phase or any other phase in a given stage of production. Thus, the possible number of preparing machines is infinitely large in comparison to the possible number of finishing machines.

Realizing the above comparisons it is at once apparent that finishing machines belong to a much smaller set of machines than preparing machines. Thus, it is more difficult to satisfy the criteria for classification as a finishing machine than it is to satisfy the criteria for a preparing machine. Therefore, where a textile machine may be classified as both a preparing machine pursuant to item 670.12 and a finishing machine pursuant to item 670.43, the machine should be classified as a finshing machine since its 670.43 is more difficult to satisfy and consequently more specifically describes the machine. Furthermore, it is settled that where two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest. General Interpretive Rules, Rule 10(d).

Conclusion

Plaintiffs have failed to overcome the presumption of correctness that favors Customs' decision regarding classification of the *Superba* in item 670.43 and consequently have not met their dual burden of proving Customs' classification erroneous and their claimed classification correct. *Hawaiian Motor Company* v. *United States, supra; Merry Mary Fabrics, Inc.* v. *United States, supra.* Plaintiffs have demonstrated that the *Superba* could be classified under item 670.12.

Defendant has demonstrated that the *Superba* is a finishing machine relative to the yarn in issue. Although the *Superba* can be viewed both as preparing yarns and finishing yarns, it is correctly classified as a finishing machine for yarns under item 670.43 since that tariff provision most specifically describes the merchandise pursuant to the General Interpretive Rules, Rule 10(c). Additionally, where two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest. General Interpretive Rules, Rule 10(d).

Accordingly, the classification by the United States Customs Service is affirmed and the relief sought by plaintiffs, is, in all respects, denied and the complaint is dismissed.

Judgment will enter accordingly.

(Slip Op. 82–96)

DYNASTY FOOTWEAR, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81–3–00272

Before RE, *Chief Judge*

On Defendant's Motion To Sever and Dismiss

[Motion denied.]

(Dated November 9, 1982)

Mandel & Grunfeld (*Steven P. Florsheim* on the memorandum), for the plaintiff. *J. Paul McGrath,* Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (Jerry P. Wiskin on the memoranda), for the defendant.

RE, *Chief Judge:* In this action contesting the appraised value of shoes imported from Taiwan, defendant moves for an order to sever and dismiss that portion of the action which relates to entry #233148, protest #2704–9–001540. Defendant alleges that duties on entry #233148 were not paid as of March 11, 1981 when this action was commenced. Consequently, defendant argues that the court lacks jurisdiction over entry #233148. *See* 28 U.S.C. § 2637(a).

Since monies sufficient to pay the duties owing on entry #233148 were in the possession of the defendant on or before March 11, 1981, defendant's motion is denied.

During 1979, seventeen entries made by plaintiff, including entry #233148, were under review by way of either protest or request for reliquidation. On August 13, 1979, pursuant to negotiations between plaintiff's attorney and customs officials, Customs agreed temporarily to suspend its efforts to collect the additional duties assessed upon liquidation of the seventeen entries, provided plaintiff would take "whatever action is necessary to assist in the expeditious reliquidation of the entries." According to Customs, one of the reasons for the suspension was that its collection efforts were having a "drastic effect upon the financial stability" of plaintiff. Subsequently, fifteen of the seventeen disputed entries were resolved in favor of plaintiff.

One of the two entries not resolved in favor of plaintiff was entry #233148, upon which plaintiff was found to owe $19,983.60 in additional duties. The protest covering that entry was denied on September 12, 1980. Therefore, the time to commence an action in this court to review the denial of plaintiff's protest on entry #233148 would have expired on March 11, 1981, the date on which plaintiff commenced this action by filing a summons.

Among the fifteen entries resolved in favor of plaintiff was entry #249903, protest #2704–9–004101, which was approved on October 31, 1980. The refund due plaintiff as a result of the approval of this protest was $24,588, an amount which exceeded the amount owed to Customs by plaintiff on entry #233148. However, for no appar-

ent or proffered reason, entry #249903 was not reliquidated by Customs until May 27, 1981.

By letter dated June 3, 1981, Customs advised plaintiff that it was collecting the duties owed on entry #233148, as well as those owed on the only other entry not resolved in favor of plaintiff, by offsetting the amount due on those two entries against the refund due on entry #249903. Customs further advised plaintiff, by letter dated June 8, 1981, that, set off having been made in accordance with the agreement of August 13, 1979, plaintiff would be receiving a net refund since the refund on entry #249903 was for an amount greater than the amount owing on the two outstanding entries.

The basis of the present motion to dismiss is plaintiff's alleged failure to comply with 28 U.S.C. § 2637(a), which states:

> A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced * * *

Defendant maintains that duties on entry #233148 were not paid when plaintiff commenced this action on March 11, 1981, even though Customs, for several months prior to March 11th, had in its possession funds owing to plaintiff which were sufficient to pay the duties on entry #233148. According to defendant, duties on entry #233148 were not paid until June 3, 1981, when Customs notified plaintiff that the duties owing on entry #233148 had been set off against the refund due on entry #249903. It is defendant's view that, if plaintiff had wished the set off to take place prior to the filing of the summons in this action, plaintiff was under an obligation to inform Customs' Financial Management Division of that desire; absent such a request, Customs was free to make the set off whenever it chose.

Plaintiff, in opposition to defendant's motion to dismiss, points to section 24.72 of the Customs Regulations, 19 C.F.R. § 24.72 (1981), which provides:

> When an importer of record or other party has a judgment or other claim allowed by legal authority against the United States, and he is indebted to the United States, either as principal or surety, for an amount which is legally fixed and undisputed, the district director shall set off so much of the judgment or other claim as will equal the amount of the debt due the Government.

Plaintiff contends that if circumstances warrant the making of a set off, section 24.72 requires that Customs make the set off as soon as the respective claims cease to be disputed. In this case, that date was October 31, 1980, the date on which plaintiff's protest covering entry #249903 was approved. Plaintiff asks the court to hold that the set off did, in fact, take place on October 31, 1980.

As the facts of this case indicate, the additional duties on entry # 233148, when they were paid, were not paid by plaintiff, but rather by the defendant by means of set off against the refund on entry # 249903. Since the protest covering entry # 249903 was approved on October 31, 1980, it is apparent that reliquidation of that entry, and set off against entry # 233148, could have been made at any time after October 31, 1980. If reliquidation of entry # 249903 had occurred prior to March 11, 1981, payment by set off of the duties owing on entry # 233148 would certainly have been made before the filing of the summons in this action.

Although Customs Regulation 24.72 clearly imposes upon Customs a duty to make set off in appropriate circumstances, that section does not specify *when* set off is to be made. The absence of a specific reference to time in this regulation requires the court to determine from the circumstances of the case when the set off reasonably could and should have been made.

In *Eddietron, Inc.* v. *United States,* 84 Cust. Ct. 158, C.D. 4853, 493 F.Supp. 585 (1980), this court was asked to hold that a partial payment on a promissory note, tendered for the amount of duties owed on six protests, be treated, for the jurisdictional purposes of 28 U.S.C. § 1582(c)(2), the predecessor provision to 28 U.S.C. § 2637(a), as payment in full of the liquidated duties owed on the first protest. Observing that the request was not expressly covered by statute or regulation, the court stated:

> As in nearly all questions neither expressly not clearly covered by the governing statute, plaintiff's request requires a balancing or weighing of competing considerations.

84 Cust. Ct. at 163. The court granted the request, stating that there was "no valid reason why the payment [could] not be applied to satisfy in full the amount owed on the first of the six entries." Since the liquidated duties were thereby considered paid, the court held that "the jurisdictional requirement of the statute [had] been fulfilled." 84 Cust. Ct. at 164.

In the present case, plaintiff, to preserve its rights as to entry # 233148, had to commence this action on or before March 11, 1981, without regard to the reliquidation of entry # 249903. By commencing this action on March 11, 1981, it may reasonably be assumed that plaintiff had relied upon and anticipated the reliquidation and set off taking place prior to that date. In any event, plaintiff knew that the protest on entry # 249903 had been approved on October 31, 1980, and that, long before March 11, 1981, monies sufficient to pay the duties on entry # 233148 were in defendant's possession.

Although section 24.72 of the Customs Regulations may be intended primarily to assist Customs in the collection of duties owed, an importer should not be deprived of the beneficial effect of that section when proper. Moreover, from defendant's admission that the set off was in accordance with the 1979 agreement, it may rea-

sonably be inferred that in order to facilitate payment and avoid otherwise unnecessary defaults, the possibility of "set off" was contemplated by the parties to the agreement. Requiring plaintiff to make a cash payment of the duties owing on entry # 233148 before March 11, 1981, under these circumstances, would have been an unnecessary and unreasonable hardship.

It is pertinent in the resolution of this case that, along with fifteen other entries, the claims on both entries #233148 and #249903 had been considered together by Customs under the August 13, 1979 "agreement." Hence, it was not unreasonable for plaintiff to expect that, from the credit in its favor as to entry #249903, defendant could, and would, set off the amount due on entry #233148. In fact, defendant has admitted that the set off was made "in accordance" with the August 13, 1979 "agreement." Since the parties were aware of plaintiff's financial difficulties, it was also reasonable to expect that a set off would be made as expeditiously as possible, rather than for payment on entry #233148 to come directly from plaintiff, only to have that amount returned shortly thereafter as a refund on entry #249903.

The undisputed facts of this case establish that reliquidation of entry #249903 and set off against entry #233148 could have occurred at any time after October 31, 1980. Thus, an amount sufficient to pay duties on entry #233148 was in defendant's possession long before March 11, 1981.

Defendant has failed to offer any explanation why the reliquidation of entry #249903 and the set off could not have occurred before March 11, 1981. In fact, defendant's concern for the "expeditious reliquidation of the entries," as explicitly stated in its letter of August 13, 1979, is inconsistent with the unexplained delay on its part to effect the reliquidation of entry #249903 sooner than May 27, 1981. From the facts of record, the court concludes that the set off may as readily have been made before March 11, 1981 as after, and that there is "no valid reason" why the set off may not be considered as having been made between October 31, 1980 and March 11, 1981.

In view of the plenary equity power possessed by the court, it is appropriate to refer to the applicable maxims and animating principles of equity designed to do justice in the particular case. *See* 28 U.S.C. § 1585 (Supp. IV 1980). Equity regards as done that which ought to be done. *See* Re, *Cases and Materials on Remedies* 38–41 (1982). In *State* v. *Chambers,* 353 S.W.2d 835, 839 (1962), the court stated:

> A long established and sound legal principle is that where mere ministerial acts are concerned *a court under proper circumstances may look upon that as done which should have been done.* This is particularly true where the public interest is directly concerned. [Italic added.]

See also Montana Power Co. v. *Federal Power Commission,* 330 F.2d 781, 788 (9th Cir. 1964). This maxim may be said to find legal application under section 24.72 of the Customs Regulations since Customs could and should have performed the ministerial act of set off before March 11, 1981. Failure to give effect to the maxim in the present case would render meaningless the mandatory directive under section 24.72, and deprive plaintiff of its day in court because of the action of the defendant.

This holding is not inconsistent with the underlying purpose of section 2637(a) which requires all duties to be paid before an action is commenced. By the Customs Courts Act of 1970, Congress decided that "[t]he importer should not be entitled to retain the use of additional duties determined to be due while court proceedings continue over possibly lengthy periods of time." *See Hearings on S. 2624 Before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives,* 91st Cong. 2d Sess. 229 (1970). Hence, the requirement that, during court proceedings, the government be in actual possession of the amount claimed by plaintiff to have been unlawfully exacted. In this case, there is no doubt that the monies due the defendant were in its actual possession on March 11, 1981, as well as during the entire course of these legal proceedings.

On the facts presented, it is the determination of the court that:

(1) Section 24.72 of the Customs Regulations requires an appropriate set off to be made;

(2) When set off is to be made under the governing regulation must be determined on a case-by-case basis;

(3) The set off in this case should have been made when it reasonably could have been made; and

(4) The set off is deemed to have occurred on or before March 11, 1981, the date this action was commenced.

In view of the foregoing, the jurisdictional requirement of 28 U.S.C. § 2637(a) has been fulfilled.

Defendant's motion to sever and dismiss is therefore denied.

Decisions of the United States Court of International Trade

(Slip Op. 82-97)

ZENITH RADIO CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80-5-00861

ORDER

(Dated November 15, 1982)

MALETZ, *Judge:* On October 26, 1982 the United States Court of Appeals for the Federal Circuit (formerly the United States Court of Customs and Patent Appeals) issued a mandate in *Montgomery Ward & Co., Inc.* and *United States* v. *Zenith Radio Corporation* (Appeal No. 81-24), reversing an order of this court in Slip Op. 81-44, and remanding that action with directions to dismiss the above-captioned case of *Zenith Radio Corporation* v. *United States* for lack of jurisdiction.

Now in conformity with that mandate, it is hereby ordered:

1. That the above-captioned case of *Zenith Radio Corporation* v. *United States* is dismissed for lack of jurisdiction; and

2. That the preliminary injunction issued in that case on December 9, 1980 is hereby dissolved.

(Slip Op. 82-98)

ZENITH RADIO CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80-5-00861

ORDER

(Dated November 15, 1982)

MALETZ, *Judge:* Upon consideration of plaintiff's motion for alteration of judgment and for leave to file a second amended complaint, defendant's opposition thereto, and all other papers and proceedings had herein, it is hereby ordered:

1. That plaintiff's motion is granted;

2. That the order of dismissal entered in this case in conformity with the mandate of the United States Court of Appeals for the Federal Circuit is hereby vacated; and

3. That plaintiff's second amended complaint is deemed filed as of the date of entry of this order.

The order dissolving the preliminary injunction in this case in conformity with the mandate of the United States Court of Appeals for the Federal Circuit shall not be affected by this order.

(Slip Op. 82-99)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (A.K.A. COMPACT) AND IMPORTS COMMITTEE, TUBE DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 81-3-00258

Before MALETZ, *Judge.*

OPINION AND ORDER

(Decided November 15, 1982)

Collier, Shannon, Rill & Scott (Paul D. Cullen, Paul C. Rosenthal and *Robert L. Meuser* on the briefs) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director, Commercial Litigation Branch, on the briefs), for the defendant.

MALETZ, *Judge:* This matter is before the court on plaintiffs' motion to obtain a preliminary injunction to restrain the Government from implementing the terms of settlement agreements entered into on April 28, 1980 between the Secretary of Commerce and various importers of television receivers manufactured in Japan and subject to an antidumping duty finding, T.D. 71-76.[1] The Secretary was authorized to enter into these agreements by section 617 of the Tariff Act of 1930, 19 U.S.C. § 1617 (1976), which provides:

> Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.[2]

Essentially, plaintiffs claim in their amended complaint that the Government violated the procedural requirements of section 617. For the reasons that follow, the court concludes that there is little, if any, likelihood that plaintiffs will prevail on the merits of this

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[1] Pursuant to rule 15(a) of the rules of this court, plaintiffs' motion for leave to amend their complaint is hereby granted since, in the court's view, the interests of justice so require. See *Foman* v. *Davis,* 371 U.S. 178, 182 (1962).

[2] Responsibility for administration of the antidumping laws, including the authority to compromise claims, was transferred to the Secretary of Commerce by Reorg. Plan No. 3 of 1979, 44 Fed. Reg. 69273.

contention and, accordingly, their motion for a preliminary injunction is denied.

Background

On May 8, 1980 the Zenith Radio Corporation (Zenith) instituted an action in this court challenging the validity of the settlement agreements here in issue on two grounds. *Zenith Radio Corporation* v. *United States,* No. 80-5-00861. The *Zenith* complaint alleged that the agreements were unlawful because the Secretary lacked the authority to enter into such agreements or, alternatively, if he had the proper authority, he acted in bad faith in entering into them. On December 9, 1980, this court issued a preliminary injunction on the basis of Zenith's allegations of bad faith. *Zenith Radio Corporation* v. *United States,* 1 CIT 53, 505 F. Supp. 216.

On March 9, 1981, plaintiffs instituted the present action. Their complaint is in all material respects identical to the complaint filed in *Zenith.* On December 16, 1981, this court granted the Government's motion for partial summary judgment on plaintiffs' first cause of action which also alleged that the Secretary lacked the authority to enter into the settlement agreements. *COMPACT* v. *United States,* 2 CIT —, 527 F. Supp. 341.[3]

On March 11, 1982, the Court of Customs and Patent Appeals (CCPA) issued an opinion in an appeal arising out of a discovery dispute in *Zenith. Montgomery Ward & Co., Inc.* v. *Zenith Radio Corporation,* 673 F.2d 1254 (1982), *cert. denied sub nom. Zenith Radio Corporation* v. *United States,* 51 U.S.L.W. 3303 (Oct. 18, 1982) (No. 82-166). The CCPA held in *Montgomery Ward* that the exercise of the Secretary's compromise authority under 19 U.S.C. § 1617 was a matter committed by law to agency discretion. *Id.* at 1262, 1263. The CCPA further held that any legal wrong to Zenith under 19 U.S.C. § 1617 could only be based on a violation of the procedures set forth in that section. *Id.* Accordingly, the substance, merits or motives for entering into the settlement agreements were held to be outside the scope of judicial review. *Id.* Hence, the *Zenith* case was remanded to this court with directions to dismiss for lack of jurisdiction. *Id.* at 1265.

Following the denial of Zenith's petition for a writ of certiorari, plaintiffs filed the present motions for leave to amend their complaint and for a preliminary injunction.

Opinion

I

The factors utilized in considering a request for a preliminary injunction are set out in the leading case of *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958). There the

[3] The same disposition was previously made on Zenith's first cause of action. *Zenith Radio Corporation* v. *United States,* 1 CIT 180, 509 F. Supp. 1282 (1981).

court held that in order to prevail the petitioner must show (1) that there is a substantial likelihood that the petitioner will prevail on the merits; (2) that without the relief requested the petitioner will be irreparably injured; (3) that the issuance of the relief requested will not substantially harm other interested parties; and (4) that the public interest would be served by the relief requested. In amplifying its earlier decision in *Virginia Petroleum,* the District of Columbia Circuit Court of Appeals noted in *Washington Metropolitan Transit Comm'n* v. *Holiday Tours, Inc.,* 559 F.2d 841 (1977), that substantial likelihood of success on the merits is not required to be established with mathematical probability. *Id.* at 843. *See also, e.g., S. J. Stile Associates, Ltd.* v. *Snyder,* 646 F.2d 522 (CCPA 1981). Since the court concludes here that there is little, if any, likelihood that plaintiffs will succeed on the merits of their amended complaint, consideration of the other three factors is unnecessary.

II

Plaintiffs' amended complaint is comprised of five counts. Count I is in all material respects identical to the first cause of action in their original complaint which alleged that the Secretary lacked authority under section 617 to enter into the settlement agreements. In *Montgomery Ward,* however, that issue was decided adversely to this contention. Count II alleges that no report as called for in section 617 was prepared. Count III alleges procedural irregularities in connection with the recommendation of the General Counsel of the Department of Commerce to the Secretary. Count IV alleges a failure on the part of the Secretary to consider the report and recommendation. Finally, Count V alleges bad faith compliance with the section 617 procedures. Since *Montgomery Ward* is stare decisis with respect to the issue in Count I, the court will limit its consideration to the allegations contained in Counts II through V of plaintiffs' amended complaint.

A

In Count II plaintiffs challenge the sufficiency of the purported section 617 report in three respects. First, plaintiffs assert, *a* report is to be submitted to the Secretary of Commerce which contains (1) the facts upon which the claim is based, (2) the probabilities of recovery, and (3) the terms upon which the claim may be compromised. No single, sufficiently detailed, comprehensive report was submitted, plaintiffs contend. Second, plaintiffs argue that no report was submitted by "a customs officer, United States attorney, or any special attorney, having charge of any claim." Finally, plaintiffs contend that claims cannot be treated on a class-wide basis in a section 617 report, but rather such reports can only focus on the claims against individual importers.

The court disagrees with each of plaintiffs' three contentions. First, *a* report does exist which was prepared by a customs officer and which contains all three section 617 criteria, that being the memorandum dated February 19, 1980 of Robert E. Chasen, the Commissioner of Customs. That memorandum relates the following: (1) the background facts of the claims (the imports and parties involved, and the basis for computing antidumping duties); (2) the difficulties encountered in attempting to collect the antidumping duties and the weaknesses of the Government's case; and (3) a recommendation to settle the cases in the range of $50 million to $100 million.

A second report which satisfies the procedural requirements of section 617 is the memorandum of Homer E. Moyer, Jr., General Counsel of the Department of Commerce, dated April 28, 1980, addressed to the Secretary. The court does not see any fair grounds for disputing that his memorandum meets all three criteria of a section 617 report. The only real dispute is whether his memorandum can serve a dual purpose, namely, that of being both a section 617 report and the recommendation of the General Counsel.

Plaintiffs argue that it cannot, that section 617 requires the participation of three distinct individuals. However, there is nothing in section 617 proscribing this dual-purpose use of the General Counsel's memorandum. Taken to its logical extreme, plaintiffs' argument leads to the incongruous result that although one of Mr. Moyer's subordinates could serve as a section 617 "special attorney," and could prepare a section 617 report under the supervision of Mr. Moyer, Mr. Moyer himself could not do so. "No rule of construction necessitates * * * acceptance of an interpretation resulting in patently absurd consequences." *United States* v. *Brown*, 333 U.S. 18, 27 (1948). *Accord United States* v. *Bryan*, 339 U.S. 323, 338 (1950).

Regarding plaintiffs' second contention that no report was prepared by "a customs officer, United States attorney, or special attorney, having charge of any claim", Mr. Chasen, in his capacity as the Commissioner of Customs, was *the* customs officer who had charge of these claims. The fact that responsibility for the administration of the antidumping laws was transferred from the Treasury to the Commerce Department does not derogate from the role of the Customs Service under section 617. For under the Trade Agreements Act of 1979 the Customs Service still classifies and ultimately liquidates entries of merchandise subject to an antidumping duty order.

Finally, class-wide treatment of the antidumping duty claims, rather than the individual importer approach which paintiffs propose, was permissible.[6] All of the claims settled in this case were

[6]The term "any claim" in section 617 clearly may include one or more claims. 1 U.S.C. § 1 provides:
In determining the meaning of any Act of Congress, unless the context indicates otherwise—
words importing the singular include and apply to several persons, parties, or things; * * *

the subject of the same antidumping duty finding, T.D. 71–76. All of the claims involved across-the-board application of the Japanese Commodity Tax to determine foreign market value and other uniform adjustments to that foreign market value. Thus, the "claim" involved here for purposes of section 617 involved the total claim for dumping duties imposed during the relevant period upon the importation of television receivers subject to T.D. 71–76 and the application of the various uniform principles developed by the Government in the course of imposing the duties upon those importations. The common threads running through these claims which made them suitable for group treatment in the antidumping duty proceeding are no less relevant in the context of a section 617 report. Indeed, these common fact elements, particularly the use of the Japanese Commodity Tax, are the very factors which led the officials who prepared section 617 reports to conclude that the Government's chances for recovery were seriously impaired. Comprehensive treatment of all the claims in one report was thus appropriate.

Plaintiffs' attack on the sufficiency of Mr. Chasen's memorandum as to its detail and specificity goes to the substance of that memorandum. This line of inquiry is foreclosed by *Montgomery Ward. Id.* at 1262.

Lastly, on the question of whether a section 617 report was prepared, the court considers relevant the various letters and memoranda prepared by high ranking Government officials responsible for the administration of the customs laws.[7] All these letters and memoranda addressed at least some, if not all, of the three section 617 criteria. Some incorporate by reference the other letters and memoranda, the former supplementing the latter. Collectively those various letters and memoranda meet the requirements of a section 617 report. All these documents discuss at least some of the facts which gave rise to the claims. Most of the documents discuss the difficulties that the United States would encounter in defending the validity of the principles which it applied in imposing the antidumping duties. Finally, some of the documents contain the views of the authors as to the terms of an acceptable settlement. What is clear is that these letters and memoranda collectively meet the requirements of section 617.

In the last analysis, a literal reading of a statute should be avoided when doing so results in violence to or a subversion of the congressional purpose for the particular statutory scheme. Discovering and then carrying out that purpose is the paramount duty of every court faced with the task of interpreting a statute. For "it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that stat-

[7] These individuals were Commissioner of Customs Chasen; Lynn J. Barden, Assistant General Counsel for Import Administration; General Counsel Moyer; David M. Cohen, Director, Commercial Litigation Branch, Department of Justice; John Greenwald, Deputy Assistant Secretary for Import Administration; and Leonard Shambon, Designate-Director, Office of Compliance, U.S. Department of Commerce.

utes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." *Cabell* v. *Markham,* 148 F.2d 737, 739 (2d Cir.), *Aff'd,* 326 U.S. 404 (1945).

Plaintiffs' argument that a single report must be prepared ignores the ultimate purpose of a section 617 report, namely, to ensure that the Secretary of Commerce makes an informed decision when contemplating a settlement. The court fails to see how the Secretary could have been better informed than in a situation where he is presented with reports from appointed officials within high echelons of the Government. Given this consideration, the various letters and memoranda prepared in contemplation of a section 617 settlement, either severally or collectively, satisfy the procedural requirements of section 617.

In sum, the court sees little, if any, likelihood of plaintiffs prevailing on the merits of Count II of their amended complaint.

B

In Count III of their amended complaint plaintiffs allege certain irregularities in the General Counsel's settlement recommendation to the Secretary. Plaintiffs do not contest that a section 617 recommendation was in fact prepared by the General Counsel. Rather, plaintiffs invite the court to review the contents of the General Counsel's memorandum which they maintain are materially defective and inaccurate, particularly as to the figure representing estimated antidumping duties.

This is an invitation which the court must decline, for plaintiffs' attack clearly goes to the merits and substance of the General Counsel's recommendation. The CCPA in *Montgomery Ward* instructed that judicial inquiry must cease once it is determined that the General Counsel recommended settlement to the Secretary. As the court stated, 673 F.2d at 1263–64:

> [I]n *Morgan IV* [*Morgan* v. *United States,* 313 U.S. 409 (1941)] the Court clearly rejected the argument that probing into reasoning or motivation was appropriate as part of a procedural inquiry.
>
> These same principles must be applied in this case. At most, Zenith may press inquiry into whether the statutory procedural requirements for settlement were satisfied. * * * Proving that the estimate in the report to him [the Secretary] was lower than what Zenith considers reasonable does not destroy the lawfulness of his decision.

For this reason, the court concludes that there is little, if any, likelihood of success on the merits of Count III of plaintiffs' amended complaint.

C

We next turn to Count IV of plaintiffs' amended complaint. The thrust of that count is that the Secretary's decision to settle was not based on the section 617 report or the General Counsel's recommendation. It is uncontested, however, that all of the reports prepared in this case were done so in advance of the Secretary's settlement announcement of April 28, 1980. Moreover, it appears from the record that the General Counsel's recommendation, which referred to and incorporated those reports, was prepared and presented to the Secretary prior to his settlement announcement. With these facts the strong presumption of administrative regularity must apply here. *Hercules, Inc.* v. *EPA,* 598 F.2d 91, 123 (D.C. Cir. 1978). Allegations of impropriety or irregularity are highly speculative at best.

Further, the CCPA cautioned in *Montgomery Ward* that it is not "the function of the court to probe the mental processes of the Secretary." *Id.* at 1263 (quoting from the Supreme Court's *Morgan IV* opinion). Probing into reasoning or motivation is inappropriate as part of a procedural inquiry. *Id.* Thus, plaintiffs "may not * * * inquire into the Secretary's mental processes in deciding upon settlement in the guise of a challenge to procedure." *Id.* at 1264. But this is in effect what plaintiffs seek to do.

It appears, therefore, extremely unlikely that plaintiffs will succeed on the merits of Count IV of their amended complaint.

D

Finally, we consider Count V of plaintiffs' amended complaint. There, plaintiffs allege bad faith compliance with the procedures of section 617. An examination of that count reveals in essence an attack on the motives for the settlement agreement. As previously noted, inquiry into such motives are beyond this court's jurisdiction. *Montgomery Ward,* 673 F.2d at 1262–63. Success on the merits of Count V is, accordingly, highly unlikely.

Conclusion

Having concluded that there is little, if any, likelihood of success on the merits of plaintiffs' amended complaint, plaintiffs' motion for a preliminary injunction is denied.

Herbert N. Maletz,
Judge.

(Slip Op. 82-100)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (A.K.A. COMPACT) AND IMPORTS COMMITTEE, TUBE DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 81-3-00258

Before MALETZ, *Judge.*

MEMORANDUM AND ORDER

(Dated November 15, 1982)

MALETZ, *Judge:* On this date, the court has issued an opinion and order denying plaintiffs' motion for a preliminary injunction. In anticipation of this action by the court, plaintiffs have moved pursuant to rule 62(c) for an injunction pending appeal. The standards for issuing such an injunction are, of course, identical in all material respects to the standards which are to be applied in determining whether or not to issue a preliminary injunction. *Long* v. *Robinson,* 432 F.2d 977, 979 (4th Cir. 1970); *Beverly* v. *United States,* 468 F.2d 732, 740 n. 13 (5th Cir. 1972); *EEOC* v. *County of Los Angeles,* 531 F. Supp. 122, 123-4 (C.D. Cal. 1982); 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2904 (1977). Since the court has denied plaintiffs' motion for a preliminary injunction on the basis that there is little, if any, likelihood of success on the merits of plaintiffs' amended complaint, plaintiffs' motion for an injunction pending appeal is likewise denied.

(Slip Op. 82-101)

COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (A.K.A. COMPACT) AND IMPORTS COMMITTEE, TUBE DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 81-3-00258

ORDER

(Dated November 15, 1982)

MALETZ, *Judge:* Upon consideration of plaintiffs' motion for consolidation of hearing on preliminary injunction with trial on the merits, defendant's response thereto, and all other papers and proceedings, it is hereby ordered:

1. That the hearing on plaintiffs' motion for a preliminary injunction is consolidated with the trial on the merits of the amended complaint;

2. That judgment is granted in favor of the defendant on Counts I, II, III, IV and V of the amended complaint; and
3. That this action is dismissed.

(Slip Op. 82-102)

AMERICAN SPRING WIRE CORPORATION, ARMCO INC., BETHLEHEM STEEL CORPORATION, FLORIDA WIRE & CABLE COMPANY, AND SHINKO WIRE AMERICA, INC., PLAINTIFFS *v.* UNITED STATES, UNITED STATES INTERNATIONAL TRADE COMMISSION, KENNETH R. MASON, SECRETARY, INTERNATIONAL TRADE COMMISSION, RAYMOND F. STECKEL, ESQ., EDWARD C. MARSCHNER, ESQ., AND GARRY P. MCCORMACK, ESQ., COUNSEL FOR CHIERS-CHATILLON-GORCY, AND MR. JOHN G. REILLY, MR. P. LANCE GRAEF, AND MR. DONALD GREENBERG, ECONOMIC CONSULTANTS TO CHIERS-CHATILLON-GORCY, DEFENDANTS

Court No. 82-10-01407

Before RAO, *Judge.*

ON MOTION FOR CONSOLIDATION OF PRELIMINARY INJUNCTION WITH CROSS MOTIONS FOR SUMMARY JUDGMENT

[Defendants' motion for summary judgment granted.]

(Dated November 16, 1982)

Eugene L. Stewart (Terence P. Stewart on the briefs, *Jeffrey S. Beckington* on the briefs and at the oral argument of the motion for a temporary restraining order) for the plaintiffs.

Michael H. Stein, General Counsel, U.S. International Trade Commission *(Joel Junker* on the briefs and at the oral arguments) for defendants U.S. International Trade Commission and Kenneth R. Mason; *Fox, Glynn & Melamed, (Garry McCormack* at the argument) for defendants Raymond F. Steckel, Edward Marschen, John C. Reilly, P. Lance Graef and Donald Greenberg.

RAO, *Judge:* This case is before the court on plaintiffs' motion for leave to amend the complaint, for a preliminary injunction, for disclosure of confidential information under protective order and for summary judgment. Defendants oppose each of the plaintiffs' motions and move for summary judgment. Both plaintiffs and defendants have submitted statements of fact as to which there is no material dispute.

The issues involved arise from petitions filed by plaintiffs and Pan American Ropes with the United States International Trade Commission (ITC) and the United States Department of Commerce (Commerce) alleging violations of the countervailing duty laws of the United States, section 701 of the Tariff Act of 1930, as amended (19 U.S.C. § 1671) by Brazil and France on prestressed concrete steel wire strand.

On the basis of the petitions, the ITC commenced investigations Nos. 701-TA-152(Brazil) and 701-TA-153(France) and subsequently sent out questionnaires to American producers of the merchandise, including the plaintiffs. On March 22, 1982, following the receipt of producers questionnaires, counsel for the French foreign manufacturers, Chiers-Chatillon-Gorcy (CCG) applied for release of certain confidential information submitted by plaintiff, under a protective order. This request was approved by the ITC on March 29, 1982 and the requested information was released to counsel for CCG and to economic consultants for CCG, John C. Reilly, P. Lance Graef and Donald Greenberg.

On October 7, 1982 counsel for CCG requested copies of other confidential information on the basis of the March 22, 1982 application and subsequent protective order and the ITC released additional information pursuant to this request.

On October 4, 1982 counsel for plaintiffs filed with defendant Kenneth R. Mason, Secretary of the ITC, a request for disclosure of business confidential information contained in the staff report in the investigation of prestressed concrete steel wire strand from Brazil and France, setting forth with particularity the information sought and the specific reasons why it was deemed necessary and that the non-confidential information available to counsel for plaintiffs was inadequate to permit meaningful analysis of the issues material to the investigation. This request was denied by defendant Kenneth R. Mason on the basis that section 207.7 of the Regulations of the ITC permit disclosure only of the prices or costs of production of the petitioner or interested parties supporting the petitioner.

The plaintiffs instituted this action on October 13, 1982 by filing and serving a summons and complaint, an application for a temporary restraining order to restrain the ITC from releasing confidential business information to counsel for the French and Brazilian manufacturers, a motion to show cause as to why the confidential business information submitted by the French and Brazilian producers should not be released to counsel for plaintiffs under protective order, and supporting memoranda of law.

This court granted a temporary restraining order on October 14, 1982, effective for 10 days, restraining the ITC from releasing confidential information to counsel for the foreign manufacturers and restraining counsel for the foreign manufacturers from utilizing the confidential information in the preparation of briefs, memoranda or presentation to the ITC and the court ordered plaintiffs to submit a bond in the amount of $1,000 as security. The order to show cause was not granted.

Defendent ITC subsequently filed a motion to consolidate the hearing on the preliminary injunction with a trial on the merits and its answer to the complaint. Both sides argued their motions for summary judgment on October 26, 1982.

The issues before the court are whether the ITC erred, as a matter of law, in not granting access to the confidential staff report to the plaintiffs, the petitioners—American manufacturers of prestressed concrete steel wire strand, and whether the ITC erred, as a matter of law, in granting access under protective order, to the foreign manufacturers of the merchandise in France to the confidential price and cost of production data submitted to the ITC by plaintiffs.

The basis for release of confidential business information under protective order by the ITC in a countervailing duty investigation is 19 U.S.C. § 1677f(c)(1)(A):

> (c) *Limited disclosure of certain confidential information under protective order.*—
>
> (1) *Disclosure by administering authority or Commission.*—
>
> (A) In General.—Upon receipt of an application which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information available under a protective order described in subparagraph (B).

The statute also delineates the power of the court to grant disclosure in 19 U.S.C. § 1677f(c)(2):

> (2) *Disclosure under court order.*—If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the United States [Court of International Trade] for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—
>
> (A) the administering authority or the Commission denied access to the information under subsection (b)(1) of this section,
>
> (B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and
>
> (C) the party which submitted the information to which the request relates has been notified, in advance of the hear-

> ing, of the request made under this section and of its right to appear and be heard.

It is clear from the language used by Congress in both these provisions that Congress intended that only confidential information submitted by a party, the petitioner or an interested party in support of the petitioner can be disclosed under protective order and that this court can only order the ITC to make available information concerning the domestic price or cost of production of the like product.

Additionally, the legislative history of the Trade Agreements Act of 1979, P.L. 96-39 makes it clear that Congress intended only information pertaining to the prices or the costs of production of the petitioner or interested parties supporting the petitioner be disclosed under protective order:

> If the Authority denies a request for information under a protective order, or the Commission denies a request for information under a protective order relating to the *prices or the costs of production of the petitioner or interested parties supporting the petitioner,* the party concerned may apply to the [Court of International Trade] for an order directing the Authority or the Commission to make such information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may, if it is satisfied the disclosure is necessary for a party's effective participation in the investigation, issue an order, which shall not have the effect of stopping or suspending the investigation, directing the Authority or Commission to make all or a portion of the information described above available under a protective order. [Emphasis added] *Trade Agreements Act of 1979, Legislative History,* Vol. II at p. 437.

This Court concludes that plaintiffs are not entitled to have disclosed to them information submitted by entities other than parties to the investigation, and that such disclosure is limited to information relating to the prices or the costs of production of the petitioner or interested parties supporting the petitioner. Since plaintiffs constitute the petitioners and the interested parties supporting the petitioner, the information to which they may have access is already in their possession. They are not entitled to access to the staff report.

Defendant ITC has challenged the jurisdiction of this court in this case. The legislative history of the Trade Agreements Act of 1979 makes it clear that Congress intended the Court of International Trade to review the treatment of confidential material by the ITC:

> *Treatment of Confidential or Privileged Material on Review.*—In general, on review of a countervailing duty or antidumping determination, there will be no public disclosure of documents, comments or information in the record treated as

> confidential or privileged by the Authority or the ITC during the course of the administrative proceeding. Nevertheless, the [Court of International Trade] may review such confidential or privileged material and may disclose such material under such terms and conditions as it may order consistent with the practices of the federal courts. *Trade Agreements Act of 1979, Legislative History, supra,* at p. 538.

It is therefore the decision of this court that defendants' motion for summary judgment be granted, and that plaintiffs' motion for summary judgment be denied.

(Slip Op. 82-103)

DIVERSIFIED PRODUCTS CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT, STEWART-WARNER CORPORATION, INTERVENOR

Court No. 82-7-01065

Before RAO, *Judge.*

ON PLAINTIFF'S MOTION TO STRIKE PORTIONS OF INTERVENOR'S ANSWER TO THE COMPLAINT

[Plaintiff's motion granted.]

(Dated November 17, 1982)

RAO, *Judge:* On October 18, 1982, Stewart-Warner Corporation's motion to intervene in the above-captioned civil action was granted by this court, and intervenor filed its answer to the complaint.

In its answer intervenor included in its responses to allegations 5 through 14 of the complaint, in addition to admissions of the allegations, provisos that its admissions are to be changed to denials in the event that the respective allegations are deemed to constitute material facts for purposes of this civil action.

Plaintiff has moved to strike those portions of intervenor's answer to the complaint pursuant to Rule 12(f) of this court which states that the court may order stricken from any pleading any insufficient defense, *inter alia.* Plaintiff also invokes Rule 8(c) of this court which sets forth that denials shall fairly meet the substance of the averments.

The issue raised by this motion is whether admissions in an answer to a complaint may be made contingent on whether the averments thus admitted are later found to be material, and if so, the answers shall then be deemed denied.

This court decides that admissions cannot be so couched. The real test of a good pleading under the Federal Rules of Civil Procedure upon which the Rules of the United States Court of International Trade were patterned is whether sufficient information is given to enable the opposing party to plead and prepare for trial.

Although alternative and hypothetical statements of defense are permitted, where a pleader intends to admit part of an averment or a qualification thereof, he must specifically state so much as he admits and specifically deny the remainder. *Kirby* v. *Turner-Day & Woolworth Handle Co.*, 50 F. Supp. 469 (D.C. Tenn. 1943). Defendant cannot admit an allegation on the one hand and deny it if it is later found to be material. Implementing the test enunciated above, this type of pleading does not give the plaintiff sufficient information to plead and prepare for trial, as it requires a mental determination as to what will be deemed material in order to prepare for trial.

It is therefore,

Ordered that plaintiff's motion to strike be, and the same hereby is, granted; and it is further

Ordered that intervenor shall file an amended answer to plaintiff's complaint within ten (10) days of entry of this Order, omitting all provisos and statements in its answer which make the responses contingent on said allegations in plaintiff's complaint not constituting material facts.

(Slip Op. 82-104)

HOWARD RAPAPORT, D.B.A. THE IN-NOVO ENGINEERING AND DEVELOPMENT CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 82-6-00869

MEMORANDUM ACCOMPANYING ORDER

(Decided November 17, 1982)

FORD, *Judge:* Plaintiff has moved this court for judgment on the pleadings and defendant has cross-moved to dismiss for lack of jurisdiction. The merchandise involved was entered as parts of motorcycles under item A692.55, Tariff Schedules of the United States, entitled to entry free of duty under the General System of Preferences, inasmuch as the merchandise was manufactured in Bombay, India. Customs classified the merchandise under provisions of item 732.42 and assessed duty thereon at 15% ad valorem.

Plaintiff claims the entry is subject to protest under § 514 (19 U.S.C. 1514) alleging that classification is incorrect. Alternatively plaintiff claims that an action lies under § 520 (19 U.S.C. 1520) based on clerical error or mistake of fact.

The merchandise was entered at the Port of Newark, New Jersey on July 22, 1980. On July 31, 1980 the importer was advised by Customs Form 29 of the proposed liquidation under item 732.42. According to a copy of the liquidation bulletin attached to defendant's moving papers and one offered by plaintiff as exhibit 8, the

entry was liquidated on April 17, 1981 in the following form and manner:

Type of entry and number	Action	Date of entry	Importer of record
CON 118037.....	Duty incr.....	07-22-08	In-Novo Co.
* * * *	*	*	*

A letter deemed to be a protest, dated August 6, 1981 was denied by Customs on September 17, 1981, as being untimely, having been filed more than 90 days after liquidation as prescribed by 19 U.S.C. 1514.

On November 19, 1981 a protest claiming relief under § 520 (19 U.S.C. 1520) for clerical error or mistake of fact was filed. This protest was denied on December 18, 1981. Plaintiff on June 14, 1982 filed a summons and on June 23, 1982 a complaint. Defendant on August 25, 1982 filed a motion to dismiss. Plaintiff then filed a motion for judgment based upon the theory of judgment on the pleadings with respect to the merits and for judgment under § 520 for clerical error or mistake of fact.

In considering plaintiff's motion for judgment on the pleadings and defendant's cross-motion to dismiss, it is well established in this field of jurisprudence that in order to litigate a matter in this court a timely protest must have been filed with Customs. It is apparent that defendant's motion to dismiss with respect to the action under 19 U.S.C. 1514 must be granted since a protest was not filed within the 90-day period prescribed by said section as indicated, supra. Therefore, a summons based upon the denial of an untimely protest is likewise untimely and does not comport with the statutory requirement of 28 U.S.C. 2636(a).

The § 520(c)(1) action for clerical error or mistake of fact must be dismissed for reasons indicated, infra. The clerical error complained of by plaintiff is the liquidation notice was void since the date of entry was indicated as "07-22-08" rather than 07-22-80. Plaintiff also contends the name of the importer of record was indicated as "In-Novo Co." whereas the proper name of the company is In-Novo Engineering and Development Company. Neither of these clerical errors are of sufficient importance to void this liquidation. In *United States* v. *Judson-Sheldon Division, National Carloading Corp.*, 42 CCPA 202, C.A.D. 594 (1955), the date of entry on the liquidation notice was set forth as "48/49" whereas the actual date of entry was December 14, 1948. The court therein made the following observation:

> The basic issue before this court is whether the information contained in the bulletin notice of liquidation was sufficient to

> inform the importer of the date of liquidation. As a corollary, it must be added that if the importer could have reasonably been misled or confused by the bulletin notice of liquidation, as posted, then it must be held that the notice was legally insufficient. [Pp. 203, 204.]

By the same token with respect to the use of the improper name of the importer, plaintiff has in fact filed its protest under the provision of 19 U.S.C. 520(c)(1) in the name of "In-Novo Co." as was other correspondence sent to Customs and attached to the moving papers.

Accordingly, the court must grant defendant's motion to dismiss.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decision

DEPARTMENT OF THE TREASURY, *November 12, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/176	Ford, J. November 9, 1982	Border Brokerage Co., Inc.	76-4-01015	Item 184.75 8% or 7.5% Item 184.85 5.2% or 3%	Item 184.47 Free of duty	Norman G. Jensen, Inc. v. U.S. (Slip Op. 81-102)	Blaine (Seattle) Grain screenings pellets
P82/177	Ford, J. November 9, 1982	Arthur J. Humphreys, Inc.	79-3-00504	Item 184.75 8% or 7.5% Item 184.85 5.2% or 3%	Item 184.47 Free of duty	Norman G. Jensen, Inc. v. U.S. (Slip Op. 81-102)	Lynden (Seattle) Grain screenings pellets
P82/178	Rao, J. November 10, 1982	North American Foreign Trading Corp.	80-2-00290	Item 676.20 5%	Item A676.20 Free of duty	Agreed statement of facts	New York Model 790 RM Rechargeable calculators product of a beneficiary developing country
P82/179	Rao, J. November 10, 1982	Noury Chemical Corporation, et al.	81-12-01774	Item 409.00 3.5¢ per lb. plus 22.5%	Item 403.90 1.7¢ per lb. plus 12.5%	Agreed statement of facts	Perkadox 16W40

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/556	Watson, J. November 5, 1982	American Roland Corp. et al.	249801A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars, batteries, etc
R82/557	Watson, J. November 5, 1982	Cohn Hall Marx	279489-A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabrics
R82/558	Watson, J. November 5, 1982	Lipmans Imports Inc.	295169A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Malleable cast iron pipe fittings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/559	Watson, J. November 5, 1982	Metropolitan Industries, Inc.	270965A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R82/560	Watson, J. November 5, 1982	Shalom & Co.	290699A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars, hooked rugs, transceivers
R82/561	Watson, J. November 5, 1982	A. D. Sutton & Sons	269561A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Scarves
R82/562	Watson, J. November 9, 1982	Elliot Import Corp.	259941A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Gloves and mittens
R82/563	Watson, J. November 9, 1982	Hayim & Co.	252882A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R82/564	Watson, J. November 9, 1982	Mitsubishi International Corp.	281417A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Cotton corduroy garments, etc

R82/565	Watson, J. November 9, 1982	Edmond S. Sassoon	255507A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Fabrics
R82/566	Re, C.J. November 10, 1982	Gitkin Co.	73-6-01358, etc	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/567	Re, C.J. November 10, 1982	Mitsui & Co. (USA), Inc.	73-10-02960	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Milwaukee; Boston; Norfolk; New York; New Orleans; San Juan; Los Angeles; Philadelphia; San Francisco; Baltimore; Charleston; Cleveland Not stated
R82/568	Re, C.J. November 10, 1982	Mitsui & Co., (USA) Inc.	74-7-01979	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	San Juan Not stated
R82/569	Re, C.J. November 10, 1982	Panation Trade Corp.	73-3-00830, etc	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/570	Rao, J. November 10, 1982	Mitsubishi International Corporation	82-5-00612	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	San Francisco Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/571	Rao, J. November 10, 1982	Topp Electronics, Inc.	79-5-00797	Constructed value	Values specified on entry papers by liquidation officer excluding one-half of amount added for assists as set forth on schedule attached to decision and judgment	Agreed statement of facts	Miami Not stated
R82/572	Watson, J. November 10, 1982	Elliot Import Corp.	231601-A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Gloves
R82/573	Watson, J. November 10, 1982	J. C. Penney	R60/21132	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	San Francisco Gloves
R82/574	Watson, J. November 10, 1982	J. C. Penney	R62/13834	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	San Francisco Sweaters
R82/575	Watson, J. November 15, 1982	Elliot Import Corp.	218735-A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Gloves and Mittens
R82/576	Watson, J. November 15, 1982	Gunze New York Inc.	R59/14696, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk piece goods

R82/577	Watson, J. November 15, 1982	Hayim & Co., Inc.	214492-A, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R82/578	Watson, J. November 15, 1982	Hayim & Co.	R59/9699, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Rugs
R82/579	Watson, J. November 15, 1982	Hayim & Co.	R60/2479, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R82/580	Watson, J. November 15, 1982	C. Itoh & Co. (America) Inc.	R59/14232, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Textiles
R82/581	Watson, J. November 15, 1982	Iwai New York Inc.	R61/8119	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Sweaters
R82/582	Watson, J. November 15, 1982	Kanematsu New York Inc.	276038-A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Table damask sets
R82/583	Watson, J. November 15, 1982	Kanematsu New York Inc.	R59/5452, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Tablecloths and napkins, etc

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/584	Watson, J. November 15, 1982	Kanematsu N.Y. Inc.	R59/6388, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Table damask cotton CV, etc
R82/585	Watson, J. November 15, 1982	E.S. Novelty Co.	263872-A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Scarves
R82/586	Watson, J. November 15, 1982	J. C. Penney	R60/7255, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Norfolk Gloves
R82/587	Watson, J. November 15, 1982	J. C. Penney	R60/9687, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Francisco Sweaters
R82/588	Watson, J. November 15, 1982	J. C. Penney	R60/10220, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Norfolk Gloves
R82/589	Watson, J. November 15, 1982	J. C. Penney	R61/902	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Newport News, (Norfolk) Men's wool gloves
R82/590	Watson, J. November 15, 1982	J. C. Penney	R61/23836, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Norfolk Sweaters

R82/591	Watson, J. November 15, 1982	Siber Hegner Co. Inc.	239188-A, etc	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Scarves
R82/592	Watson, J. November 17, 1982	Borneo Sumatra Trading Co.	R58/18535, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Fabrics
R82/593	Watson, J. November 17, 1982	Compass Instrument & Optical Co., Inc.	R61/415, etc	Export value	Appraised unit values less 7.5% thereof	Agreed statement of facts	New York Binoculars and cases
R82/594	Watson, J. November 17, 1982	Hayim & Co.	R58/15188, etc	Export value	Appraised unit values less 7.5% thereof	Agreed statement of facts	New York Rugs
R82/595	Watson, J. November 17, 1982	Hayim & Co.	R58/23672, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs and mats
R82/596	Watson, J. November 17, 1982	Hayim & Co.	R59/15672, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Rugs and mats
R82/597	Watson, J. November 17, 1982	C. Itoh & Co. (America) Inc.	R60/2992, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Tablecloths and napkins

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/598	Watson, J. November 17, 1982	C. Itoh & Co. (America) Inc.	R60/3653, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Tablecloths and napkins
R82/599	Watson, J. November 17, 1982	C. Itoh & Co. (America) Inc.	R66/4385, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Tablecloths and napkins
R82/600	Watson, J. November 17, 1982	Lipmans Imports, Inc.	R60/20083, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Malleable pipe fittings
R82/601	Watson, J. November 17, 1982	New York Merchandise Co., Inc.	R60/8497	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Cotton brassieres
R82/602	Watson, J. November 17, 1982	Edmond S. Sassoon	R58/21633, etc	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Fabrics

ERRATUM

In the Customs Bulletin of October 20, 1982, Vol. 16, No. 42, Slip Op. 82–74 on page 21, the three paragraphs following the indented material at the top of the page are also quoted from *A. N. Deringer, Inc.* v. *United States,* 61 Cust. Ct. 66, C.D. 3530 (1981), and should be indented. The paragraph beginning "The testimony adduced herein" is the first paragraph on the page that is part of the text of Slip Op. 82–74.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *November 24, 1982*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the matter of
CERTAIN AUTOMOTIVE VISORS } Investigation No. 337-TA-117

Notice of Termination of Two Respondents Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondents Mercedes-Benz of North America Inc. and Daimler-Benz A.G. on the basis of a settlement agreement.

SUMMARY: On July 2, 1982, complainant Prince Corporation (Prince), respondents Mercedes-Benz of North America Inc. and Daimler-Benz A.G., and the Commission investigative attorney filed a joint motion to terminate the above-captioned investigation with respect to Mercedes-Benz and Daimler-Benz on the basis of a settlement agreement entered into between Prince, Mercedes-Benz and Daimler-Benz. On July 20, 1982, the presiding officer recommended that the joint motion be granted. A Federal Register notice was published on August 25, 1982, seeking comments from interested members of the public and other government agencies on the proposed termination of these respondents. 47 F.R. 37316. No comments were received. On October 27, 1982 the Commission granted the joint motion and terminated the investigation as to respondents Mercedes-Benz and Daimler-Benz on the basis of the settlement agreement.

SUPPLEMENTARY INFORMATION: The Commission is conducting investigation No. 337-TA-117 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation and sale of certain automotive visors, which are alleged to infringe certain claims of U.S. Letters Patent Nos. 3,926,470 and 4,227,241, owned by complainant Prince. The alleged effect or tendency of these unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of any nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

By order of the Commission.

Issued: November 17, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN CUBE PUZZLES } Investigation No. 337-TA-112

Notice of Termination of Respondent on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent Chadwick-Miller, Inc. (Chadwick-Miller) on the basis of a settlement agreement.

SUMMARY: On July 12, 1982, a joint motion (Motion No. 112-27) was filed by complainant Ideal Toy Corporation (Ideal) and respondent Chadwick-Miller, Inc. (Chadwick-Miller) to terminate Chadwick-Miller as a party-respondent in the above-captioned investigation on the basis of a settlement agreement. On July 28, 1982, the presiding officer recommended that the joint motion be granted. A Federal Register notice was published on September 9, 1982, seeking comments from interested members of the public and other Government agencies on the proposed termination of this respondent. No comments were received. On November 12, 1982, the Commission granted the joint motion to terminate the investigation as to respondent Chadwick-Miller on the basis of the settlement agreement.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain cube puzzles. Notice of the insititution of the investigation was published in the Federal Register of December 29, 1981 (46 F.R. 62964).

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0499.

By order of the Commission.

Issued: November 16, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN VERTICAL MILLING MACHINES AND PARTS, ATTACHMENTS AND ACCESSORIES THERETO } Investigation No. 337-TA-133

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: November 15, 1982.

DONALD K. DUVALL,
Chief Administrative Law Judge.

Investigation No. 731-TA-88 (Final)

CARBON STEEL WIRE ROD FROM VENEZUELA

AGENCY: United States International Trade Commission.

ACTION: Continuation of final antidumping investigation.

EFFECTIVE DATE: October 27, 1982.

SUMMARY: On October 7, 1982, the United States Department of Commerce suspended its antidumping investigation concerning carbon steel wire rod from Venezuela (47 F.R. 44362, October 7, 1982). The basis for the suspension was an agreement by CVG- Siderurgica del Orinoco C.A. (Sidor), the only known Venezuelan producer and exporter of carbon steel wire rod, to discontinue all exports of the subject merchandise to the United States. Accordingly, pursuant to section 734(f)(1)(B) of the Tariff Act of 1930 (19 U.S.C. § 1673c(f)(1)(B)), the United States International Trade Commission suspended its antidumping investigation on carbon steel wire rod from Venezuela (47 F.R. 49907, November 3, 1982). On October 27, 1982, however, a request to continue the investigation was filed by counsel for Sidor pursuant to section 734(g)(1) of the Tariff Act (19 U.S.C. § 1673c(g)(1)). Accordingly, the Commission hereby gives notice of the continuation of investigation No. 731-TA-88 (Final), Carbon Steel Wire Rod from Venezuela. The Commission will make its determination in this investigation within 45 days of the date on which Commerce publishes its final antidumping determination.

This notice is published pursuant to section 207.42 of the Commission's Rules of Practice and Procedure (19 CFR 207.42).

By order of the Commission.

Issued: November 12, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN VERTICAL MILLING MACHINES AND PARTS, ATTACHMENTS AND ACCESSORIES THERETO } Investigation No. 337-TA-133

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 14, 1982, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1337), on behalf of Textron, Inc., 40 Westminster Street, Providence, Rhode Island 02903. Bridgeport Machines Division of Textron manufactures, distributes and sells vertical milling machines in the United States. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain vertical milling machines and parts, attachments and accessories thereto or in their sale, by reason of (a) violation of section 43 of the Lanham Act (15 U.S.C. § 1125(a)); (b) infringement of Bridgeport's and Textron's federally registered trademarks in viola-

tion of section 32(l)of the Lanham Act (15 U.S.C. § 1114(1)); (c) infringement of Bridgeport's common-law trademark rights; (d) trademark dilution; (e) misappropriation, simulation or adoption of the shape, design, and trade dress of Bridgeport SERIES I vertical milling machine; (f) passing off; (g) false advertising; (h) violation of the Uniform Deceptive Trade Practices Act; and (i) unfair competition. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and conduct an expedited hearing on permanent relief and, after a full investigation, to issue both a permanent exclusion order and a permanent cease and desist order.

AUTHORITY: The authority for insitution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 10, 1982, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unauthorized importation of certain vertical milling machines and parts, attachments and accessories thereto into the United States, or in their sale, by reason of the alleged (a) violation of section 43 of the Lanham Act, 15 U.S.C. § 1125(a); (b) infringement of federally registered trademarks in violation of section 32(l) of the Lanham Act, 15 U.S.C. § 1114(l); (c) infringement of common-law trademark rights; (d) trademark dilution; (e) misappropriation, simulation or adoption of shape, design and trade dress; (f) passing off; (g) false advertising; (h) unfair competition, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Textron, Inc., 40 Westminster Street, Providence, Rhode Island 02903.

(b) The respondents are the following companies, alleged to be in violation of section 337, by having committed one or more of the unfair acts and unfair methods of competition set forth in paragraph (1), and are the parties upon which the complaint is to be served:

	This letter indicates which of the acts or methods listed in paragraph (1) applies
Lilian Machinery Industrial Co., Ltd., 34, Lane 46, Ti-Hwa Street, Sec. 1, Taipei, Taiwan, 101.	a, e, g, h
Poncho Enterprise Co., Ltd., P.O. Box 26-282, Taipei, Taiwan.	a, e, g, h
Hong Yeong Machinery Industrial Co., Ltd., No. 4-5, Ta Fu Road, Onli Village, Sheng Kang Hsiang Taichung Hsien, Taiwan.	a, b, h
Pal-Up Enterprises Co., Ltd., P.O. Box 275, Feng Yuan, Taiwan.	c, b, h
She Hong Industrial Company, Ltd., 398 Sec. 1, Shi Twen Road, Taichung, Taiwan.	a, b, e, h
Yeong Chin Machinery Industries Co., Ltd., 79 San Feng Road, Yeng Yuan, Tai-Chung, Taiwan.	a, b, e, f, h
Yun Fu Machinery Co., Ltd., No. 6, Lane 58, Sec. 2, Ta Ching Street, Taichung, Taiwan.	a, b, e, f, h
Chanun Machine Tool Co., Ltd., No. 20, Lane 76, Lung Chiang Street, Taipei (104), Taiwan.	a, c, h
Fu Shanlong Industry Co., Ltd., No. 954 Chung San Road, Shen Kang Hsiang, Taichung, Taiwan.	a, h
Jenq Shing Enterprises Co., Ltd., No. 4, Lane 223, Sec. 3, Chung Ching N. Road, Taipei, Taiwan.	a, h
M.I.T. Machinery & Tool Co., Ltd., Evergreen Island Mansion, Room No. 7, 5th Floor, No. 7, Ching Tao East Road, Taipei, Taiwan.	a, e, g, h
Lio Ho Machine Works, Ltd., No. 334, Hsin Sheng Road, Sec. 2, Chung Li City (320), Taiwan.	a, h
Long Chang Machinery Co., Ltd., No. 13-27, Jen-Sing Road, Taiping Shiang, Taichung, Taiwan.	a, h
Maw Chang Machinery Co., Ltd., No. 26-1, Hsiao Tien Road, Wu Jih, Taichung, Taiwan.	a, h
Nahshon Machinery Co., Ltd., No. 109, Ren Her Road, Taichung, Taiwan.	a, h
Hsu Pen Machinery Co., No. 18-2, Lane 68, Shui Yuan Road, Feng Yuan, Taichung, Taiwan.	a, h
Kiheung Machinery Works, 2-3 Block, 2nd Industrial District.	a, h
Daejeon, Republic of Korea	a, h
Shye Shing Machinery Mfg., Co., Ltd., No. 17, Ta Ching Street, Sec. 1, S. District, Taiching, Taiwan.	a, h
Kingtex Corporation, 3rd Floor, No. 346, Nanking E. Road, Sec. 3, Palace Bldg., Taipei, Taiwan.	a, b, c, h

	This letter indicates which of the acts or methods listed in paragraph (1) applies
Great International Corporation, 477 Tung Hwa S. Road, Taipei, Taiwan.	a, h
King Machinery Inc., 2510 East Del Amo Boulevard, Compton, California 90221.	a, c, h
Warner Tool & Machine Sales, Inc., 8236 Lankershim Boulevard, North Hollywood, California 91605.	a, h
Big-Joe Industrial Tool Corp., 2821 W. 11th Street & 2702 Telephone Road, Houston, Texas.	a, g, h
ABC Industrial Machine Tool Co., 4151 Bandini Boulevard, Los Angeles, California 90058.	a, e, g, h
Kanematsu-Gosho, U.S.A., Inc., 543 West Algonquin Road, Arlington Heights, Illinois 60005.	a, h
Rutland Tool & Supply Co., Inc., 16700 Gale Avenue, City of Industry, California 91745.	a, b, e, f, h
Haerr Machinery Inc., 3431 E. LaPalma Avenue, Anaheim, California 92806.	a, b, e, f, h
Cadillac Machines Inc., 1175 N. Knollwood Circle, Anaheim, California 92801.	a, b, e, f, h
Kabaco Tools, Inc., 6300 Eighteen Mile Road, Sterling Heights, Michigan 48078.	a, b, e, f, h
Webb Machinery Corporation, 3011 Lomita Boulevard, Torrance, California 90505.	a, b, e, f, h
Select Machine Tool Co., 8671 Hayden Place, Culver City, California 90230.	a, b, e, f, h
Delta Machine & Tool Company, Inc., 1750 N. Fifth Street, Philadelphia, Pennsylvania 19122.	a, h
Jet Equipment & Tools Inc., 1901 Jefferson Avenue, Tacoma, Washington 98402.	a, h
Pilgrim Industries Inc., P.O. Box 17412, Nashville, Tennessee 37217.	a, h
Republic Machinery Company, Inc., 3620 South Santa Fe Avenue, Los Angeles, California 90058.	a, c, h
South Bend Lathe, Inc., 400 West Sample Street, South Bend, Indiana 46625.	a, h
Luson International Distributors, Inc., P.O. Box 462, Ravenswood, West Virginia 26164.	a, b, e, f, h
Intermark-Hartford Corp., 510A Industrial Avenue, Teterborom, New Jersey 07608.	a, b, e, f, h
Enco Manufacturing Co., 5000 Bloomingdale Avenue, Chicago, Illinois 60639.	a
Y.C.I. USA Inc., 1515 Kona Drive, Compton, California 90220.	a, b, c, e, f, h
Yamazen U.S.A., Inc., 1130 E. Dominguez Street, Carson, California 90746.	a, b, e, f, h
Doall Company, 254 N. Laurel Avenue, Des Plaines, Illinois 60016.	a, h

	This letter indicates which of the acts or methods listed in paragraph (1) applies
Deka Machine Sales Corp., 320 Riverdale Avenue, Yonkers, New York 10705.	a, h

(c) Oreste Russ Pirfo, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 10.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, Phone: 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Oreste Russ Pirfo, Esq., Unfair Import Investigations Division, Room 122, U.S. International Trade Commission, telephone 202-523-4693.

By order of the Commission.

Issued: November 12, 1982.

KENNETH R. MASON,
Secretary.

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